RIGHT TO KNOW ADVISORY COMMITTEE

DRAFT AGENDA
May 30, 2012
9:30 a.m.
Room 438, State House, Augusta

Convene

1. Welcome and Introductions
   Senator David R. Hastings III, Chair
   Representative Joan M. Nass

2. Summary of Second Regular Session, 125th Legislature's FOA actions in 2012
   - RTK AC recommendations
     - LD 1465, An Act to Amend the Laws Governing Freedom of Access
     - LD 1804, An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Public Records Exceptions
     - LD 1805, An Act to Implement Recommendations of the Right To Know Advisory Committee Concerning a Public Records Exception for Proposed Legislation, Reports and Working Papers of the Governor
   - Proposed public records exceptions

3. Existing exceptions review process
   - Title 22, section 8754, reporting of sentinel events, tabled
   - Titles 26 – 39-A, recommendations due January 2013

4. Continuing projects
   - PL c. 264: email and other communications of elected/public officials (2011)
   - Use of technology in public proceedings (participation from remote locations)
   - Training and education for public officials - expansion to include appointed, others?
   - Templates for drafting specific confidentiality statutes
   - Application of FOA laws to Maine Public Broadcasting Network

5. Criminal History Record Information Act (CHRIA) --- update

6. Bulk records --- update

7. Law School Externship – update

8. Suggested topics and projects to discuss
   - Letter from Freedom of Information Coalition related to encryption of radio transmissions between law enforcement and public safety personnel
   - Letter from Rep. Nelson related to parental privacy in Maine schools
   - Penalties for release of confidential information

9. Subcommittees: chairs, members, duties

10. Scheduling future meetings, subcommittee meetings

11. Other?

Adjourn

APPROVED CHAPTER

MAY 21 '12 662

BY GOVERNOR PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND TWELVE

S.P. 456 - L.D. 1465

An Act To Amend the Laws Governing Freedom of Access

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA §400 is enacted to read:

§400. Short title

This subchapter may be known and cited as "the Freedom of Access Act."

Sec. 2. 1 MRSA §402, sub-§3, ¶M, as amended by PL 2005, c. 381, §1, is further amended to read:

M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure ~~and~~, systems and software. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure;

Sec. 3. 1 MRSA §402, sub-§§5 and 6 are enacted to read:

5. Public access officer. "Public access officer" means the person designated pursuant to section 413, subsection 1.

6. Reasonable office hours. "Reasonable office hours" includes all regular office hours of an agency or official.

Sec. 4. 1 MRSA §408, as amended by PL 2009, c. 240, §4, is repealed.

Sec. 5. 1 MRSA §408-A is enacted to read:

§408-A. Public records available for inspection and copying

Except as otherwise provided by statute, a person has the right to inspect and copy any public record in accordance with this section within a reasonable time of making the request to inspect or copy the public record.

1. Inspect. A person may inspect any public record during reasonable office hours. An agency or official may not charge a fee for inspection unless the public record cannot be inspected without being converted or compiled, in which case the agency or official may charge a fee as provided in subsection 8.

2. Copy. A person may copy a public record in the office of the agency or official having custody of the public record during reasonable office hours or may request that the agency or official having custody of the record provide a copy. The agency or official may charge a fee for copies as provided in subsection 8.

A. A request need not be made in person or in writing.

B. The agency or official shall mail the copy upon request.

3. Acknowledgment; clarification; time estimate. The agency or official having custody or control of a public record shall acknowledge receipt of a request made according to this section within a reasonable period of time, and may request clarification concerning which public record or public records are being requested. The agency or official shall provide a good faith, nonbinding estimate of the time within which the agency or official will comply with the request. The agency or official shall make a good faith effort to fully respond to the request within the estimated time.

4. Refusals; denials. If a body or an agency or official having custody or control of any public record refuses permission to inspect or copy or abstract a public record, the body or agency or official shall provide written notice of the denial, stating the reason for the denial, within 5 working days of the request for inspection or copying.

5. Schedule. Inspection, conversion pursuant to subsection 7 and copying of a public record subject to a request under this section may be scheduled to occur at a time that will not delay or inconvenience the regular activities of the agency or official having custody or control of the public record requested. If the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted in a conspicuous public place and at the office of the agency or official, if an office exists.

6. No requirement to create new record. An agency or official is not required to create a record that does not exist.

7. Electronically stored public records. An agency or official having custody or control of a public record subject to a request under this section shall provide access to an electronically stored public record either as a printed document of the public record or in the medium in which the record is stored, at the requester's option, except that the agency

or official is not required to provide access to an electronically stored public record as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file.

A. If in order to provide access to an electronically stored public record the agency or official converts the record into a form susceptible of visual or aural comprehension or into a usable format for inspection or copying, the agency or official may charge a fee to cover the cost of conversion as provided in subsection 8.

B. This subsection does not require an agency or official to provide a requester with access to a computer terminal.

8. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees for public records as follows.

A. The agency or official may charge a reasonable fee to cover the cost of copying.

B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than $15 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.

C. The agency or official may charge for the actual cost to convert a public record into a form susceptible of visual or aural comprehension or into a usable format.

D. An agency or official may not charge for inspection unless the public record cannot be inspected without being compiled or converted, in which case paragraph B or C applies.

E. The agency or official may charge for the actual mailing costs to mail a copy of a record.

9. Estimate. The agency or official having custody or control of a public record subject to a request under this section shall provide to the requester an estimate of the time necessary to complete the request and of the total cost as provided by subsection 8. If the estimate of the total cost is greater than $30, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than $100, subsection 10 applies.

10. Payment in advance. The agency or official having custody or control of a public record subject to a request under this section may require a requester to pay all or a portion of the estimated costs to complete the request prior to the search, retrieval, compiling, conversion and copying of the public record if:

A. The estimated total cost exceeds $100; or

B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.

11. Waivers. The agency or official having custody or control of a public record subject to a request under this section may waive part or all of the total fee charged pursuant to subsection 8 if:

A. The requester is indigent; or

B. The agency or official considers release of the public record requested to be in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

Sec. 6. 1 MRSA §409, sub-§1, as amended by PL 2009, c. 240, §5, is further amended to read:

1. Records. ~~If any body or agency or official who has custody or control of any public record refuses permission to inspect or copy or abstract a public record, this denial must be made by the body or agency or official in writing, stating the reason for the denial, within 5 working days of the request for inspection by any person.~~ Any person aggrieved by a refusal or denial to inspect or copy a record under section 408-A may appeal, within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals are privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.

Sec. 7. 1 MRSA §412, as amended by PL 2007, c. 576, §2, is further amended to read:

§412. Public records and proceedings training for certain elected officials and public access officers

1. Training required. ~~Beginning July 1, 2008,~~ A public access officer and an elected official subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official or public access officer shall complete the training not later than the 120th day after the date the elected official takes the oath of office to assume the person's duties as an elected official or the person is designated as a public access officer pursuant to section 413, subsection 1. ~~For elected officials subject to this section serving in office on July 1, 2008, the training required by this section must be completed by November 1, 2008.~~

2. Training course; minimum requirements. The training course under subsection 1 must be designed to be completed by an official or a public access officer in less than 2 hours. At a minimum, the training must include instruction in:

A. The general legal requirements of this chapter regarding public records and public proceedings;

B. Procedures and requirements regarding complying with a request for a public record under this chapter; and

C. Penalties and other consequences for failure to comply with this chapter.

An elected official or a public access officer meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C

regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information.

3. Certification of completion. Upon completion of the training course required under subsection 1, the elected official or public access officer shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training completed and the date of completion. The elected official shall keep the record or file it with the public entity to which the official was elected. A public access officer shall file the record with the agency or official that designated the public access officer.

4. Application. This section applies to a public access officer and the following elected officials:

A. The Governor;

B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;

C. Members of the Legislature elected after November 1, 2008;

E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;

F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;

G. Officials of school administrative units ~~and school boards~~; and

H. Officials of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.

Sec. 8. 1 MRSA §§413 and 414 are enacted to read:

§413. Public access officer

1. Designation; responsibility. Each agency, county, municipality, school administrative unit and regional or other political subdivision shall designate an existing employee as its public access officer to serve as the contact person for that agency, county, municipality, school administrative unit and regional or other political subdivision with regard to requests for public records under this subchapter. The public access officer is responsible for ensuring that each public record request is acknowledged within a reasonable period of time and that a good faith estimate of when the response to the request will be complete is provided according to section 408-A. The public access officer shall serve as a resource within the agency, county, municipality, school

administrative unit and regional or other political subdivision concerning freedom of access questions and compliance.

2. Acknowledgment and response required. An agency, county, municipality, school administrative unit and regional or other political subdivision that receives a request to inspect or copy a public record shall acknowledge and respond to the request regardless of whether the request was delivered to or directed to the public access officer.

3. No delay based on unavailability. The unavailability of a public access officer may not delay a response to a request.

4. Training. A public access officer shall complete a course of training on the requirements of this chapter relating to public records and proceedings as described in section 412.

§414. Public records; information technology

An agency shall consider, in the purchase of and contracting for computer software and other information technology resources, the extent to which the software or technology will:

1. Maximize public access. Maximize public access to public records; and

2. Maximize exportability; protect confidential information. Maximize the exportability of public records while protecting confidential information that may be part of public records.

Sec. 9. 6 MRSA §174, sub-§5, as enacted by PL 2007, c. 563, §1, is amended to read:

5. Organization; conduct of business; employees. Within one week after each annual election or appointment, the directors shall meet for the purpose of electing a chair, treasurer and clerk to serve for the ensuing year and until their successors are appointed and qualified. The directors from time to time may choose and employ and fix the compensation of any other necessary officers and agents, who serve at the pleasure of the directors. The treasurer shall furnish bond in the sum and with sureties approved by the directors. The airport authority shall pay the cost of the bond.

The directors may adopt and establish bylaws consistent with the laws of this State and necessary for the convenience and the proper management of the affairs of the airport authority and perform other acts within the powers delegated by law to the directors.

The directors must be sworn to the faithful performances of their duties, including the duties of a member who serves as clerk or clerk pro tem. The directors shall publish an annual report that includes a report of the treasurer.

The directors shall appoint and fix the salary of an airport manager who may not be a director. The airport manager has such power and authority as the directors in their bylaws or by resolution specify and delegate to the airport manager. Subject to approval of or authorization from the directors, the airport manager may appoint any other

employees necessary to carry out the corporate purposes of the airport authority and may fix their salaries.

Business of the airport authority must be conducted in accordance with the applicable provisions of the ~~freedom of access laws, Title 1, sections 401 to 412~~ Freedom of Access Act.

Sec. 10. 12 MRSA §8424, sub-§2, as amended by PL 1981, c. 278, §4, is further amended to read:

2. Application for spray project eligibility. Forest land owners may apply to the director prior to December 1st of any year to be eligible to participate in the spray projects for the following 5 years. The application ~~shall~~ must show:

A. The name and address of the applicant and its agent, if any;

B. The number and location on maps prescribed by the director of the acres of forest land for which application is being made;

C. The location on maps prescribed by the director of the timber types, timber ages and proportions of spruce, fir and non-host species within such forest land;

D. The location on maps of private and public road access to such forest land;

E. The location on maps of all residences within that forest land;

F. A 5-year cutting plan for such forest land showing plans for timber cutting, road construction and other planned land utilizations; and

G. Any other information pertinent to the description, utilization and management of such forest land as the director may require for purposes of spray project and management program planning.

The date for submission of the information required under subsection 2, paragraph C, may be extended by the director upon a showing that such information is not then available.

Cutting plans accompanying the application may be utilized by the Bureau of Forestry for planning purposes, and may be shared with other government agencies, but ~~shall~~ do not constitute records available for public inspection or disclosure pursuant to Title 1, section ~~408~~ 408-A.

For excise tax purposes, such application must designate one person who ~~shall~~ must be billed and notified of any lien recorded under this subchapter. When a tax bill or notice of lien is sent to this person, it ~~shall constitute~~ constitutes notice to all other landowners listed on the application. Each forest ~~landowner shall be~~ land owner is jointly and severally liable for any tax, penalty or interest imposed under this subchapter.

Sec. 11. 21-A MRSA §22, sub-§3, as amended by PL 2009, c. 564, §1, is further amended to read:

3. Confidential information. Notwithstanding subsection 1 and Title 1, section ~~408~~ 408-A, if a registered voter meets certain conditions, the voter's information must be kept confidential as provided in this subsection.

A. For a voter who is certified by the Secretary of State as a program participant in the Address Confidentiality Program pursuant to Title 5, section 90-B, all records maintained by the registrar pertaining to that voter must be kept confidential and must be excluded from public inspection.

B. For a voter who submits to the registrar a signed statement that the voter has a good reason to believe that the physical safety of the voter or a member of the voter's immediate family residing with the voter would be jeopardized if the voter's residence address were open to public inspection, that voter's residence address and mailing address, if the mailing address is the same as or discloses the voter's residence address, must be kept confidential and must be excluded from public inspection. The remainder of the information in that voter's record that is designated as public information in section 196-A remains a public record and may be made available to the public according to the use and distribution requirements provided in that section. The voter's signed statement is also a public record. A voter's address that is excluded from public inspection under this paragraph may be made available free of charge to a law enforcement officer or law enforcement agency that makes a written request to use the information for a bona fide law enforcement purpose or to a person identified by a court order if directed by that order.

Sec. 12. 21-A MRSA §22, sub-§5, as enacted by PL 2003, c. 584, §1, is amended to read:

5. Signature and identification number of registered voter. Notwithstanding subsection 1 and Title 1, section ~~408~~ 408-A, the voter's signature and identification number on the voter registration application and associated records in electronic format are designated as nonpublic records and the registrar shall exclude those items from public inspection. Voter signatures on voter registration applications and associated records in a printed hard-copy format are public records in accordance with subsection 1 and Title 1, section ~~408~~ 408-A.

Sec. 13. 21-A MRSA §22, sub-§7, as enacted by PL 2011, c. 342, §5, is amended to read:

7. Incoming voting list. After the incoming voting list is unsealed following the election, the list must be made available for public inspection and copying in accordance with Title 1, section ~~408~~ 408-A.

Sec. 14. 21-A MRSA §1104, as enacted by PL 1989, c. 802, §1, is amended to read:

§1104. Public records

The commission shall retain for public inspection all completed code forms accepted by the commission under section 1103. A code subscribed to by a candidate is a public record under Title 1, section ~~408~~ 408-A.

Sec. 15. 25 MRSA §2006, first ¶, as amended by PL 2011, c. 298, §11, is further amended to read:

Notwithstanding Title 1, ~~sections 401 to 410~~ chapter 13, subchapter 1, all applications for a permit to carry concealed handguns and documents made a part of the application, refusals and any information of record collected by the issuing agency during the process of ascertaining whether an applicant is of good moral character and meets the additional requirements of sections 2003 and 2005 are confidential and may not be made available for public inspection or copying. The applicant may waive this confidentiality by written notice to the issuing authority. All proceedings relating to the issuance, refusal or revocation of a permit to carry concealed handguns are not public proceedings under Title 1, chapter 13, unless otherwise requested by the applicant.

Sec. 16. 25 MRSA §2929, sub-§3, as enacted by PL 1997, c. 291, §3, is amended to read:

3. Disclosure required. The restrictions on disclosure provided under subsection 2 apply only to those portions of databases, reports, audio recordings or other records of the bureau or a public safety answering point that contain confidential information. Other information that appears in those records and other records, except information or records declared to be confidential under other law, is subject to disclosure pursuant to Title 1, section ~~408~~ 408-A. The bureau shall develop procedures to ensure protection of confidential records and information and public access to other records and information. Procedures may involve developing edited copies of records containing confidential information or the production of official summaries of those records that contain the substance of all nonconfidential information.

Sec. 17. 25 MRSA §2957, as repealed and replaced by PL 1999, c. 790, Pt. A, §33, is amended to read:

§2957. Confidentiality

Notwithstanding any other provisions of law, the investigative records of the agency are confidential and all meetings of the board are subject to Title 1, ~~sections 401 to 410~~ chapter 13, subchapter 1, except that those meetings may be held in executive session to discuss any case investigations or any disciplinary actions.

Sec. 18. 29-A MRSA §2251, sub-§7, as amended by PL 2011, c. 390, §1, is further amended to read:

7. Report information. An accident report made by an investigating officer or a report made by an operator as required by subsection 2 is for the purposes of statistical analysis and accident prevention.

A report or statement contained in the accident report, or a report as required by subsection 2, a statement made or testimony taken at a hearing before the Secretary of State held under section 2483, or a decision made as a result of that report, statement or testimony may not be admitted in evidence in any trial, civil or criminal, arising out of the accident.

A report may be admissible in evidence solely to prove compliance with this section.

Notwithstanding subsection 7-A, the Chief of the State Police may disclose the date, time and location of the accident and the names and addresses of operators, owners, injured persons, witnesses and the investigating officer. On written request, the chief may furnish a photocopy of the investigating officer's report at the expense of the person making the request. The cost of furnishing a copy of the report is not subject to the limitations of Title 1, section ~~408, subsection 3~~ 408-A.

Sec. 19. 29-A MRSA §2251, sub-§7-A, ¶C, as enacted by PL 2011, c. 390, §2, is amended to read:

C. The Department of Public Safety, Bureau of State Police may publicly disseminate nonpersonally identifying accident report data that are contained in an accident report database maintained, administered or contributed to by the Bureau of State Police. The cost of furnishing a copy of such data is not subject to the limitations of Title 1, section ~~408~~ 408-A.

Sec. 20. 32 MRSA §9418, first ¶, as enacted by PL 1987, c. 170, §19, is amended to read:

Notwithstanding Title 1, ~~sections 401 to 410~~ chapter 13, subchapter 1, all applications for a license to be a contract security company and any documents made a part of the application, refusals and any information of record collected by the commissioner during the process of ascertaining whether an applicant is of good moral character and meets the additional requirements of sections 9405 and 9411-A, and all information of record collected by the commissioner during the process of ascertaining whether a natural person meets the requirements of section 9410-A, are confidential and may not be made available for public inspection or copying. The applicant or natural person may waive this confidentiality by written notice to the commissioner. All proceedings relating to the issuance of a license to be a contract security company are not public proceedings under Title 1, chapter 13, unless otherwise requested by the applicant.

Sec. 21. 33 MRSA §651, last ¶, as enacted by PL 2009, c. 575, §1, is amended to read:

Notwithstanding Title 1, section ~~408, subsection 3~~ 408-A, this chapter governs fees for copying records maintained under this chapter.

Sec. 22. 34-A MRSA §1216, sub-§1, as amended by PL 2005, c. 487, §§2 to 4, is further amended to read:

1. Limited disclosure. All orders of commitment, medical and administrative records, applications and reports, and facts contained in them, pertaining to any person receiving services from the department must be kept confidential and may not be disclosed by any person, except that public records must be disclosed in accordance with Title 1, section ~~408~~ 408-A; criminal history record information may be disseminated in accordance with Title 16, chapter 3, subchapter 8; and documents other than those documents pertaining to information obtained by the department for the purpose of evaluating a client's ability to participate in a community-based program or from informants in a correctional or detention facility for the purpose of determining whether

facility rules have been violated or pertaining to a victim's request for notice of release may, and must upon request, be disclosed:

A. To any person if the person receiving services, that person's legal guardian, if any, and, if that person is a minor, that person's parent or legal guardian give informed written consent to the disclosure of the documents referred to in this subsection after being given the opportunity to review the documents sought to be disclosed;

B. To any state agency if necessary to carry out the statutory functions of that agency;

C. If ordered by a court of record, subject to any limitation in the Maine Rules of Evidence, Rule 503;

D. To any criminal justice agency if necessary to carry out the administration of criminal justice or the administration of juvenile criminal justice or for criminal justice agency employment;

E. To persons engaged in research if:

(1) The research plan is first submitted to and approved by the commissioner;

(2) The disclosure is approved by the commissioner; and

(3) Neither original records nor identifying data are removed from the facility or office that prepared the records.

The commissioner and the person doing the research shall preserve the anonymity of the person receiving services from the department and may not disseminate data that refer to that person by name or number or in any other way that might lead to the person's identification;

F. To persons who directly supervise or report on the health, behavior or progress of a juvenile, to the superintendent of a juvenile's school and the superintendent's designees and to agencies that are or might become responsible for the health or welfare of a juvenile if the information is relevant to and disseminated for the purpose of creating or maintaining an individualized plan for the juvenile's rehabilitation, including reintegration into the school; or

G. To any state agency engaged in statistical analysis for the purpose of improving the delivery of services to persons who are or might become mutual clients if:

(1) The plan for the statistical analysis is first submitted to and approved by the commissioner; and

(2) The disclosure is approved by the commissioner.

The commissioner and the state agency requesting the information shall preserve the anonymity of the persons receiving services from the department and may not disseminate data that refer to any person by name or number or that in any other way might lead to a person's identification.

Notwithstanding any other provision of law, the department may release the names, dates of birth and social security numbers of juveniles receiving services from the department and, if applicable, eligibility numbers and the dates on which those juveniles received

services to the Department of Health and Human Services for the sole purpose of determining eligibility and billing for services under federally funded programs administered by the Department of Health and Human Services and provided by or through the department. The department may also release to the Department of Health and Human Services information required for and to be used solely for audit purposes, consistent with federal law, for those services provided by or through the department. Department of Health and Human Services personnel must treat this information as confidential in accordance with federal and state law and must return the records when their purpose has been served.

Sec. 23. 35-A MRSA §6410, sub-§5, as enacted by PL 1995, c. 616, §10, is amended to read:

5. Water districts; organization; conduct of business. Within one week after each annual appointment or election, the trustees of a water district shall meet for the purpose of electing a chair, treasurer and clerk from among them to serve for the ensuing year and until their successors are elected or appointed and qualified. The trustees, from time to time, may choose and employ and fix the compensation of any other necessary officers and agents who serve at the pleasure of the trustees. The treasurer shall furnish bond in the sum and with sureties approved by the trustees. The water district shall pay the cost of the bond.

The trustees may adopt and establish bylaws consistent with the laws of this State and necessary for the convenience and the proper management of the affairs of the water district, and perform other acts within the powers delegated by law to the trustees.

The trustees ~~shall~~ must be sworn to the faithful performances of their duties including the duties of a member who serves as clerk or clerk pro tem. The trustees shall publish an annual report that includes a report of the treasurer.

Business of the district must be conducted in accordance with the applicable provisions of the ~~freedom of access laws, Title 1, sections 401 to 410~~ Freedom of Access Act.

Sec. 24. 38 MRSA §640, sub-§4, as enacted by PL 1989, c. 453, §2, is amended to read:

4. Release of public information. All information submitted to the agencies by the applicants for a license under the Federal Power Act ~~shall constitute~~ constitutes a public record pursuant to Title 1, section 402, unless such information is otherwise exempted from public disclosure by state law. Release of this information to members of the public ~~shall be~~ is governed by Title 1, section ~~408~~ 408-A.

Sec. 25. Appropriations and allocations. The following appropriations and allocations are made.

ATTORNEY GENERAL, DEPARTMENT OF THE

Administration - Attorney General 0310

Initiative: Provides funds to increase one part-time Assistant Attorney General position to full-time to serve as a Public Access Ombudsman.

GENERAL FUND	2011-12	2012-13
POSITIONS - LEGISLATIVE COUNT	0.000	0.500
Personal Services	$0	$38,889
All Other	$0	$5,178
GENERAL FUND TOTAL	$0	$44,067

Public Law 2011
C. 655

GENERAL FUND	2011-12	2012-13
POSITIONS - LEGISLATIVE COUNT	0.000	(1.000)
Personal Services	$0	($76,592)
All Other	$0	($10,000)
GENERAL FUND TOTAL	$0	($86,592)

OTHER SPECIAL REVENUE FUNDS	2011-12	2012-13
All Other	$0	($99,359)
OTHER SPECIAL REVENUE FUNDS TOTAL	$0	($99,359)

AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF DEPARTMENT TOTALS	2011-12	2012-13
GENERAL FUND	**$0**	**($2,646)**
FEDERAL EXPENDITURES FUND	**$0**	**($18,429)**
OTHER SPECIAL REVENUE FUNDS	**($156,113)**	**($249,322)**
DEPARTMENT TOTAL - ALL FUNDS	**($156,113)**	**($270,397)**

Sec. A-3. Appropriations and allocations. The following appropriations and allocations are made.

ATTORNEY GENERAL, DEPARTMENT OF THE

Administration - Attorney General 0310

Initiative: Establishes one part-time Assistant Attorney General position to serve as an ombudsman and assist in compliance with the State's freedom of access laws in accordance with the Maine Revised Statutes, Title 5, section 200-I.

GENERAL FUND	2011-12	2012-13
POSITIONS - LEGISLATIVE COUNT	0.000	0.500
Personal Services	$0	$36,531
GENERAL FUND TOTAL	$0	$36,531

Administration - Attorney General 0310

Initiative: Adjusts funding to align allocations with projected available resources approved by the Revenue Forecasting Committee on March 1, 2012.

APPROVED CHAPTER

STATE OF MAINE MAR 16 '12 524

BY GOVERNOR PUBLIC LAW

IN THE YEAR OF OUR LORD

TWO THOUSAND AND TWELVE

H.P. 1330 - L.D. 1804

An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §1555-D, sub-§1, as enacted by PL 2003, c. 444, §2, is repealed.

Sec. 2. 22 MRSA §3034, sub-§2, as enacted by PL 1991, c. 339, §5, is amended to read:

2. Confidentiality; disclosure. ~~All~~ Except as provided in subsection 5, all information and materials gathered and retained pursuant to this section must be used solely for the purposes of identification of deceased persons and persons found alive who are unable to identify themselves because of mental or physical impairment. The files and materials are confidential, except that compiled data that does not identify specific individuals may be disclosed to the public. Upon the identification of a deceased person, those records and materials used for the identification may become part of the records of the Office of Chief Medical Examiner and may then be subject to public disclosure as pertinent law provides.

Sec. 3. 22 MRSA §3034, sub-§5 is enacted to read:

5. Release to assist in search. The Office of Chief Medical Examiner may release confidential information and materials about a missing person that are gathered and retained pursuant to this section if the Chief Medical Examiner determines that such release may assist in the search for the missing person.

Sec. 4. 22 MRSA §8707, sub-§4, as amended by PL 2007, c. 466, Pt. A, §44, is further amended to read:

4. Certain confidential information. ~~The rules must determine to be confidential or privileged information all data designated or treated as confidential or privileged by the former Maine Health Care Finance Commission. Information regarding discounts off charges, including capitation and other similar agreements, negotiated between a payor or purchaser and a provider of health care that was designated as confidential only for a~~

2-3

~~limited time under the rules of the former Maine Health Care Finance Commission is confidential to the organization, notwithstanding the termination date for that designation specified under the prior rules.~~ The board may determine financial data submitted to the organization under section 8709 to be confidential information if the public disclosure of the data will directly result in the provider of the data being placed in a competitive economic disadvantage. This section may not be construed to relieve the provider of the data of the requirement to disclose such information to the organization in accordance with this chapter and rules adopted by the board.

Sec. 5. 23 MRSA §63, as repealed and replaced by PL 2001, c. 158, §1, is repealed and the following enacted in its place:

§63. Confidentiality of records held by the department and the Maine Turnpike Authority

1. Confidential records. The following records in the possession of the department and the Maine Turnpike Authority are confidential and may not be disclosed, except as provided in this section:

A. Records and correspondence relating to negotiations for and appraisals of property; and

B. Records and data relating to engineering estimates of costs on projects to be put out to bid.

2. Engineering estimates. Engineering estimates of total project costs are public records after the execution of project contracts.

3. Records relating to negotiations and appraisals. The records and correspondence relating to negotiations for and appraisals of property are public records beginning 9 months after the completion date of the project according to the record of the department or Maine Turnpike Authority, except that records of claims that have been appealed to the Superior Court are public records following the award of the court.

Sec. 6. 23 MRSA §8115, as amended by PL 2005, c. 312, §9, is further amended to read:

§8115. Obligations of authority

All expenses incurred in carrying out this chapter must be paid solely from funds provided to or obtained by the authority pursuant to this chapter. Any notes, obligations or liabilities under this chapter may not be deemed to be a debt of the State or a pledge of the faith and credit of the State; but those notes, obligations and liabilities are payable exclusively from funds provided to or obtained by the authority pursuant to this chapter. Pecuniary liability of any kind may not be imposed upon the State or any locality, town or landowner in the State because of any act, agreement, contract, tort, malfeasance, misfeasance or nonfeasance by or on the part of the authority or its agents, servants or employees. ~~The records and correspondence relating to negotiations, trade secrets received by the authority, estimates of costs on projects to be put out to bid and any~~

~~documents or records solicited or prepared in connection with employment applications are confidential. The authority is deemed to have a lawyer-client privilege.~~

Sec. 7. 23 MRSA §8115-A is enacted to read:

§8115-A. Authority records

1. Confidential records. The following records of the authority are confidential:

A. Records and correspondence relating to negotiations of agreements to which the authority is a party or in which the authority has a financial or other interest. Once entered into, an agreement is not confidential;

B. Trade secrets;

C. Estimates prepared by or at the direction of the authority of the costs of goods or services to be procured by or at the expense of the authority; and

D. Any documents or records solicited or prepared in connection with employment applications, except that applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired, except that personal contact information is not a public record as provided in Title 1, section 402, subsection 3, paragraph O.

2. Lawyer-client privilege. The authority may claim the lawyer-client privilege in the same manner and circumstances as a corporation is authorized to do so.

Sec. 8. 24 MRSA §2505, as amended by PL 2007, c. 380, §1, is further amended to read:

§2505. Committee and other reports

Any professional competence committee within this State and any physician licensed to practice or otherwise lawfully practicing within this State shall, and any other person may, report the relevant facts to the appropriate board relating to the acts of any physician in this State if, in the opinion of the committee, physician or other person, the committee or individual has reasonable knowledge of acts of the physician amounting to gross or repeated medical malpractice, habitual drunkenness, addiction to the use of drugs, professional incompetence, unprofessional conduct or sexual misconduct identified by board rule. The failure of any such professional competence committee or any such physician to report as required is a civil violation for which a fine of not more than $1,000 may be adjudged.

Except for specific protocols developed by a board pursuant to Title 32, section 1073, 2596-A or 3298, a physician, dentist or committee is not responsible for reporting misuse of alcohol or drugs or professional incompetence or malpractice as a result of physical or mental infirmity or by the misuse of alcohol or drugs discovered by the physician, dentist or committee as a result of participation or membership in a professional review committee or with respect to any information acquired concerning misuse of alcohol or drugs or professional incompetence or malpractice as a result of physical or mental

infirmity or by the misuse of alcohol or drugs, as long as that information is reported to the professional review committee. Nothing in this section may prohibit an impaired physician or dentist from seeking alternative forms of treatment.

The confidentiality of reports made to a board under this section is governed by this chapter.

Sec. 9. 24 MRSA §2510, sub-§1, ¶¶D and E, as enacted by PL 1977, c. 492, §3, are amended to read:

D. Pursuant to an order of a court of competent jurisdiction; ~~or~~

E. To qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any patient or physician is first deleted.; or

Sec. 10. 24 MRSA §2510, sub-§1, ¶F is enacted to read:

F. To other state or federal agencies when the information contains evidence of possible violations of laws enforced by those agencies.

Sec. 11. 24-A MRSA §2393, sub-§2, ¶D, as corrected by RR 1995, c. 2, §52, is amended to read:

D. The initial surcharges must be paid in accordance with the following provisions.

(1) Beginning July 1, 1995 every insurer writing workers' compensation insurance in the State shall collect from workers' compensation insurance policyholders and pay to the pool a surcharge on all surchargeable premiums received by the insurer for those policies. During the initial surcharge period, the surcharge is at a fixed rate of 6.32% of the surchargeable premium. The surcharge may be applied only to policies with an effective date on or after 12:01 a.m., July 1, 1995. All surcharges received by each insurer during the preceding calendar quarter must be remitted to the pool within 15 days following the end of each calendar quarter, except that servicing carriers shall remit on February 15th, May 15th, August 15th and November 15th of each year. Any surcharge proceeds not remitted on a timely basis accrue interest at the rate of 10% per annum from the due date until paid in full. The pool is entitled to reimbursement from any insurer failing to remit surcharge proceeds on a timely basis for the pool's costs of collection of those amounts, including all collection costs and fees, reasonable attorney's and paralegal's fees and any other professional fees and expenses associated with the pool's collection efforts. The surcharges described in this subparagraph do not apply to reinsurance recognized by the superintendent pursuant to ~~chapter~~ Chapter 250, section 2, paragraph G or section 3, paragraph G, procured by an individual self-insured employer or a self-insured employer group.

(2) Self-insured employers that secured their obligation to provide workers' compensation benefits under the Workers' Compensation Act through issuance or renewal at any point during the fresh start period of an insurance policy for any

portion of any of the policy years 1988 to 1992 are subject to a surcharge as provided in the following.

(a) During the initial surcharge period the rate of surcharge is 6.32% of the surchargeable premium as adjusted pursuant to this paragraph for the self-insured employer's current plan year utilizing estimated payroll as submitted with the self-insured employer's renewal application for authority to self-insure, in accordance with Chapter 250, section 2, paragraph C, subparagraph 1, division c or Chapter 250, section 3, paragraph C, subparagraph 1, division g as applicable, subject to audit pursuant to division (d), subdivision (iii). If the plan year in which a surcharge is collected or a credit is distributed is shorter than 12 months, due to a change in accounting period or termination of self-insurance authorization, the surcharge or credit for that plan year must be based upon the final audited payroll for the short plan year.

(b) All surcharges must be collected or distributed on a plan year basis. In each plan year, the percentage of the surchargeable premium to be surcharged is the same percentage as is applied to an insured employer whose policy period coincided with the plan year.

(c) Except for a successor self-insured employer, each self-insured employer shall pay surcharges relating to only that portion of the policy years 1988 to 1992 in which the self-insured employer insured its workers' compensation obligations. The surcharge factor, as determined by the board under this chapter, must be adjusted to take into consideration the policy years or portions of policy years 1988 to 1992 in which a self-insured employer was self-insured.

The self-insured employer adjustment is determined as follows. The surcharge factor must be multiplied by the factor attributed to each of the years 1988 to 1992, as set forth in the table below. If a self-insured employer was insured only during a portion of a policy year, then the factor for that year is prorated based on the ratio of the number of days in the policy year during which the self-insured employer was insured to 365 days.

Policy Year	Factor
1988	28.48%
1989	30.70%
1990	23.26%
1991	11.55%
1992	6.01%

(d) The board shall administer the surcharges on self-insured employers as follows.

(i) The board shall issue surcharge billings to self-insured employers, pursue collection of all invoiced surcharges, initiate legal proceedings as necessary to collect surcharges and maintain records adequate to administer the surcharge process. The records of the board and of the

bureau form the basis for identifying self-insured employers who are subject to this paragraph.

(ii) Annual surcharges may be paid in a single lump sum within 30 days of the receipt of the pool's invoice or in quarterly installments at the self-insured employer's option. The board shall issue a yearly invoice as soon as practicable after the self-insured employer's plan approval or renewal date and receipt of all necessary supporting information from the superintendent. Each invoice must contain a schedule of dates when quarterly installments are due and clearly state the policy year or years for which the surcharge is imposed, the surcharge percentage multiplied by the factor applicable to each policy year and the amount of the surchargeable premium.

(iii) Each individual self-insured employer shall report final audited payrolls to the pool not later than 60 days after the end of each plan year and each self-insured employer that is a member of a self-insured group or the group's administrator, as the group may select, shall report final audited payrolls to the pool not later than 120 days after the end of each plan year and shall remit with the audit information any additional surcharges resulting from the audit.

(iv) Upon the request of a self-insured employer, including a successor self-insured employer or an administrator of a self-insurance group, the board may determine whether there was a factual inaccuracy in the information underlying a surcharge billing issued by the board for the fresh start period or whether the surcharge calculated by the board is consistent with the provisions of this subparagraph. The request must be filed within 180 days from the date on which the final payment is due and must be in writing, including a statement of the reason for the request and the amount, if known, of the alleged overcharge. If an appeal based upon an alleged overcharge is sustained, the board shall refund the overcharge, together with any investment earnings on those amounts. If a self-insured employer is aggrieved by the final action or decision of the board, or if the board does not act on the written request within 60 days, the self-insured employer may appeal to the superintendent within 60 days of such action or decision of the board. Notwithstanding a pending appeal, a self-insured employer must pay any surcharge billing issued by the board.

(e) Self-insured employers have the following obligations with respect to the surcharge process.

(i) As a condition of continuing authorization to self-insure, each self-insured employer and each group self-insurance administrator shall assist the board and the superintendent in the calculation, billing and collection of any applicable surcharge. The required assistance includes maintaining and providing, upon request of the board or the superintendent, actual premium history and all payroll and experience information necessary to calculate self-insured employer premiums, as

specified in this subparagraph. Information provided by the self-insured employer is subject to audit by the pool and the superintendent at any time and self-insured employers shall provide to the pool, or its designee, and to the superintendent full and complete access to all books and records relating in any way to the audit. Group self-insurance administrators shall give prompt notice to the superintendent of any changes in group membership.

(ii) Information provided by self-insured employers to the board pursuant to this paragraph is confidential. The board shall protect the confidentiality of all self-insured employer information in its possession, whether the information is obtained directly from the self-insured employer or from the superintendent or a group administrator. All information relating to a self-insured employer provided pursuant to this paragraph and in the possession of the board or superintendent continues to be confidential until that information is destroyed.

(iii) A self-insurance group may act as the collection agent for its members. Any group so electing shall notify the board. The board shall bill the group on a consolidated basis. The group shall remit its entire quarterly payment to the board within 30 days after receiving the invoice, whether or not any members remain in default and notify the board and the superintendent of any delinquency.

(iv) Each self-insured employer shall make provisions for possible surcharges in the normal course of operations and pay the full amount of any surcharge installment within 30 days after receiving an invoice from the board or the self-insured employer's self-insurance group. Late payments are subject to interest at the rate of 10% per annum.

(v) The failure of any self-insured employer or self-insurance group to comply with its duties under this paragraph constitutes grounds for suspension, revocation, termination of the option to self-insure, expulsion from a self-insurance group or other appropriate sanctions authorized under section 12-A, in addition to all procedures for the collection of past-due accounts otherwise available by law to the board or the governing body of the self-insurance group.

(f) The superintendent has the following responsibilities with respect to the surcharge process.

(i) The superintendent shall furnish to the board, on a monthly basis, a list of all self-insurance plan approvals, renewals and anniversaries that have occurred since the last report or for any other reason were not included in any previous report, including all approvals, terminations and membership changes for group self-insurers. For each employer listed, the superintendent shall provide all available information necessary for the board's imputed calculations under this paragraph, including: the date the new plan year began; the self-insurance group, if any, to which the self-insured employer belongs; the dates of coverage under each policy issued or renewed in policy years 1988 to 1992; the rating information

for the current plan year, including estimated payroll by classification, premium rate for each classification, experience modification and other applicable rating adjustments; information relating to changes of ownership or control, changes of operations, changes of name or organizational structure; and other information necessary to determine successorship.

(ii) The superintendent shall supplement promptly the initial report as necessary, including any revision to the self-insured employer's rating information on audit, any other additions or corrections to incomplete or inaccurate information provided in the initial report and the length of the plan year, if shorter than 12 months.

(g) A successor self-insured employer is subject to surcharge on the same basis as the predecessor employer would be if still actively doing business and self-insured. If a self-insured employer is the successor to more than one employer, then the successor employer's self-insured employer adjustment is the sum of each predecessor employer's self-insured employer adjustment multiplied by the ratio of the employer's surchargeable premium for the 12-month period immediately preceding the succession transaction to the combined surchargeable premium of all predecessor employers for that 12-month period.

(i) If one or more of the predecessor employers was insured at the time of the succession transaction, its self-insured employer adjustment is calculated pursuant to division (c), (h) or (i) as if it had become self-insured at the time of the succession transaction.

(ii) If business operations that were covered under a single workers' compensation policy or certificate of self-insurance authority are subsequently separately owned by virtue of any succession transaction, dissolution, reincorporation or other transaction or series of transactions, for purposes of this subparagraph each business is treated as a distinct employer, subject to surcharge as either an insured employer or a self-insured employer.

(iii) If substantial changes in operations during the 12-month period immediately preceding the succession transaction make the 12-month surchargeable premium an inappropriate measure of a predecessor employer's workers' compensation exposure prior to the transaction, the board may adopt procedures for calculating an annualized premium in a manner consistent with the intent of this subparagraph.

(h) A self-insured employer that secured its obligation to provide workers' compensation benefits under the Workers' Compensation Act through a self-insurance program approved by the superintendent for the entirety of that self-insured employer's policy years 1988 to 1992, in which the self-insured employer actually had an obligation to secure benefits under the Workers' Compensation Act is not subject to the surcharge.

(i) Except for any successor self-insured employer, self-insured employers that commence operations in the State on or after July 1, 1995 are subject to surcharge under this subparagraph on the same basis as self-insured employers that secured compensation under the Workers' Compensation Act by the purchase of an insurance policy throughout the entire fresh start period.

(3) An employer may, as specified in this subparagraph, prepay all of its surcharges for a period of 10 consecutive policy years or plan years. The 10-year period starts with the employer's first renewal date or plan year following July 1, 1995. Within 30 days after the inception of the first plan year or first policy renewal date following July 1, 1995, if the employer intends to exercise this option, the employer must file with the pool written notice electing to make a lump-sum payment of surcharges and shall include with the notice the employer's full lump-sum payment. If the election is not made within 30 days after the first day of the first plan year or policy year following July 1, 1995, the option expires and is no longer available. The pool shall implement such procedures for administering this option as the board determines necessary. An employer that elects this option shall reimburse the pool for its expenses of administering this option for that employer, including the cost of individually allocating those costs to individual employers, in accordance with billing procedures developed and implemented by the board. This subparagraph does not eliminate or limit the employer's liability to pay adjusted surcharges or supplemental surcharges pursuant to paragraph E or section 2394.

For purposes of this subparagraph, "lump-sum payment" is the surcharge for the first year multiplied by 10 and discounted to net present value using:

(a) A 5% discount rate;

(b) The first day of the first plan year or policy year starting on or after July 1, 1995; and

(c) An assumption that the surcharge for each of the 10 plan years or policy years would have been paid on the first day of each subsequent plan year or policy year.

Report A

Amy ROFS

L.D. 1805

Date: 4/2/12 Report A (Filing No. H-882)

JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE

HOUSE OF REPRESENTATIVES

125TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1331, L.D. 1805, Bill, "An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning a Public Records Exception for Proposed Legislation, Reports and Working Papers of the Governor"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'**Sec. 1. 1 MRSA §402, sub-§1-B** is enacted to read:

1-B. Internal staff of the Governor. "Internal staff of the Governor" means the Governor's chief of staff, legal counsel, director of policy and employees under their direct supervision. "Internal staff of the Governor" does not include any other person employed in any other executive agency, including those designated by state law as housed in or transferred to the Office of the Governor. This subsection is repealed December 31, 2013.

Sec. 2. 1 MRSA §402, sub-§3, ¶C-2 is enacted to read:

C-2. Records relating to the deliberative process of the Governor, until:

(1) The records are made available to any person or agency outside the internal staff of the Governor;

(2) The records are publicly distributed in accordance with legislative rules;

(3) Adjournment of the session of the Legislature for which the records were prepared occurs; or

(4) Six months from the creation of the records has passed.

This paragraph is repealed December 31, 2013;

Sec. 3. 1 MRSA §402, sub-§5 is enacted to read:

5. Records relating to the deliberative process of the Governor. "Records relating to the deliberative process of the Governor" means all records containing

predecisional advice, opinions, deliberations or recommendations created by the Governor or the internal staff of the Governor, maintained within the exclusive custody and control of the Governor or the internal staff of the Governor and in which the subject matter of the decision or policy under consideration requires legislative action or records concerning budgeting proposals or requests. This subsection is repealed December 31, 2013.'

SUMMARY

This amendment is the majority report of the Joint Standing Committee on Judiciary. It replaces the bill. It provides a temporary public records exception for records relating to the deliberative process of the Governor for legislative proposals and budgeting proposals and requests.

"Records relating to the deliberative process of the Governor" is defined to mean all records containing predecisional advice, opinions, deliberations or recommendations created by the Governor or the internal staff of the Governor and maintained within the exclusive custody and control of the Governor or the internal staff of the Governor. The internal staff of the Governor consists of the chief of staff, legal counsel, director of policy and employees under their direct supervision. The records become public when the first of the following occurs:

1. The records are made available to any person or agency outside the internal staff of the Governor;

2. The records are publicly distributed in accordance with legislative rules;

3. Adjournment of the Legislature for which the records were prepared occurs; or

4. Six months from the creation of the records has passed.

This amendment provides that the public records exception for the records relating to the deliberative process of the Governor is repealed December 31, 2013.

Report C

ROFS

L.D. 1805

Date: 4/2/12 Report C (Filing No. H-883)

JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE

HOUSE OF REPRESENTATIVES

125TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "B" to H.P. 1331, L.D. 1805, Bill, "An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning a Public Records Exception for Proposed Legislation, Reports and Working Papers of the Governor"

Amend the bill by striking out the title and substituting the following:

'An Act Concerning the Public Records Exception for Legislative Working Papers'

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'**Sec. 1. 1 MRSA §402, sub-§3, ¶C,** as amended by PL 1991, c. 773, §2, is repealed.

Sec. 2. 4 MRSA §1701, sub-§7, as enacted by PL 1995, c. 451, §1, is amended to read:

7. Meeting; quorum; concurrence. The Executive Director of the Legislative Council shall call the first meeting of the commission no later than 5 days after the appointments are made. For all subsequent meetings, the commission shall meet, either in person or by teleconference, on the call of the chair or on the request of at least 2 members. The presence of at least 2 members is required to conduct a meeting. The concurrence of at least 2 members is required for any formal action taken by the commission. ~~The working papers, draft reports and other papers of the commission in the possession of a legislative employee are excepted from the definition of public records in accordance with Title 1, section 402, subsection 3, paragraph C.~~

Sec. 3. Appropriations and allocations. The following appropriations and allocations are made.

LEGISLATURE

Legislature 0081

Initiative: Provides funds for one additional clerical position to handle the projected increase in the number of requests for information resulting from the repeal of confidentiality for certain legislative records.

GENERAL FUND	2011-12	2012-13
POSITIONS - LEGISLATIVE COUNT	0.000	1.000
Personal Services	$0	$44,239
All Other	$0	$1,500
GENERAL FUND TOTAL	$0	$45,739

SUMMARY

This amendment is a minority report of the Joint Standing Committee on Judiciary.

This amendment replaces the bill. It repeals the public records exception that applies to working papers and other records of Legislators. Its also adds an appropriations and allocations section.

FISCAL NOTE REQUIRED

(See attached)

Revised: 03/22/12 mac

125th MAINE LEGISLATURE

LD 1805 **LR 2687(03)**

An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning a Public Records Exception for Proposed Legislation, Reports and Working Papers of the Governor

Fiscal Note for Bill as Amended by Committee Amendment "B" (H-883)
Committee: Judiciary
Fiscal Note Required: Yes

Fiscal Note

	FY 2011-12	FY 2012-13	Projections FY 2013-14	Projections FY 2014-15
Net Cost (Savings)				
General Fund	$0	$45,739	$63,434	$66,531
Appropriations/Allocations				
General Fund	$0	$45,739	$63,434	$66,531

Fiscal Detail and Notes

The Legislature will incur additional costs and require additional clerical staff to respond to requests for certain legislative documents. The bill includes an appropriation of $45,739 in fiscal year 2012-13 for one additional clerical position and related All Other expenses to handle the increased workload.

L.D. 1805

Date: 4-10-12 (Filing No. S-544)

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

125TH LEGISLATURE

SECOND REGULAR SESSION

SENATE AMENDMENT "B" to COMMITTEE AMENDMENT "A" to H.P. 1331, L.D. 1805, Bill, "An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning a Public Records Exception for Proposed Legislation, Reports and Working Papers of the Governor"

Amend the amendment in section 1 in subsection 1-B by striking out all of the last underlined sentence (page 1, lines 20 and 21 in amendment)

Amend the amendment in section 2 in paragraph C-2 by striking out all of the last 2 lines (page 1, lines 29 and 30 in amendment) and inserting the following:

'(4) Six months from the creation of the records has passed;'

Amend the amendment in section 3 in subsection 5 by striking out all of the last underlined sentence (page 2, lines 5 and 6 in amendment)

Amend the amendment by adding after section 3 the following:

'**Sec. 4. Effective date.** This Act takes effect January 1, 2015.'

SUMMARY

This amendment provides an effective date of January 1, 2015 and removes repealing provisions inconsistent with that change.

SPONSORED BY:

(Senator HASTINGS)

COUNTY: Oxford

SENATE AMENDMENT

L.D. 1805

Date: 4-5-12 (Filing No. S-531)

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

125TH LEGISLATURE

SECOND REGULAR SESSION

SENATE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 1331, L.D. 1805, Bill, "An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning a Public Records Exception for Proposed Legislation, Reports and Working Papers of the Governor"

Amend the amendment by inserting after the title the following:

'Amend the bill by striking out the title and substituting the following:

'An Act Concerning the Public Records Exception for Gubernatorial and Legislative Working Papers' '

Amend the amendment by inserting after section 1 the following:

'Sec. 2. 1 MRSA §402, sub-§3, ¶C, as amended by PL 1991, c. 773, §2, is repealed.'

Amend the amendment by inserting after section 3 the following:

'Sec. 4. 4 MRSA §1701, sub-§7, as enacted by PL 1995, c. 451, §1, is amended to read:

7. Meeting; quorum; concurrence. The Executive Director of the Legislative Council shall call the first meeting of the commission no later than 5 days after the appointments are made. For all subsequent meetings, the commission shall meet, either in person or by teleconference, on the call of the chair or on the request of at least 2 members. The presence of at least 2 members is required to conduct a meeting. The concurrence of at least 2 members is required for any formal action taken by the commission. ~~The working papers, draft reports and other papers of the commission in the possession of a legislative employee are excepted from the definition of public records in accordance with Title 1, section 402, subsection 3, paragraph C.~~

Sec. 5. Appropriations and allocations. The following appropriations and allocations are made.

LEGISLATURE

Legislature 0081

SENATE AMENDMENT

Initiative: Provides funds for one additional clerical position to handle the projected increase in the number of requests for information resulting from the repeal of confidentiality for certain legislative records.

GENERAL FUND	2011-12	2012-13
POSITIONS - LEGISLATIVE COUNT	0.000	1.000
Personal Services	$0	$44,239
All Other	$0	$1,500
GENERAL FUND TOTAL	$0	$45,739

Amend the amendment by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment maintains the provisions of Committee Amendment "A" and repeals the public records exception that applies to legislative working papers and other records. It also adds an appropriations and allocations section.

SPONSORED BY: _____

(Senator DILL)

COUNTY: Cumberland

FISCAL NOTE REQUIRED
(See attached)

SENATE AMENDMENT

Approved: 04/04/12 mac

125th MAINE LEGISLATURE

LD 1805 **LR 2687(05)**

An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning a Public Records Exception for Proposed Legislation, Reports and Working Papers of the Governor

Fiscal Note for Senate Amendment "A" to Committee Amendment "A" S-531
Sponsor: Sen. Dill of Cumberland
Fiscal Note Required: Yes

Fiscal Note

	FY 2011-12	FY 2012-13	Projections FY 2013-14	Projections FY 2014-15
Net Cost (Savings)				
General Fund	$0	$45,739	$63,434	$66,531
Appropriations/Allocations				
General Fund	$0	$45,739	$63,434	$66,531

Fiscal Detail and Notes

The Legislature will incur additional costs and require additional clerical staff to respond to requests for certain legislative documents. This amendment includes an appropriation of $45,739 in fiscal year 2012-13 for one additional clerical position and related All Other expenses to handle the increased workload.

APPROVED CHAPTER

MAR 16 '12 511

BY GOVERNOR PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND TWELVE

S.P. 537 - L.D. 1627

An Act Regarding the Filing of Birth, Death and Marriage Data

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 19-A MRSA §651, sub-§2, as amended by PL 1997, c. 537, §12 and affected by §62, is further amended to read:

2. Application. The parties wishing to record notice of their intentions of marriage shall submit an application for recording notice of their intentions of marriage. The application must include a signed certification that the information recorded on the application is correct and that the applicant is free to marry according to the laws of this State. The applicant's signature must be acknowledged before an official authorized to take oaths. ~~Applications recording notice of intentions to marry must be open for public inspection in the office of the clerk. When the application is submitted, the applicant shall provide the clerk with the social security numbers of the parties. The application must include a statement that the social security numbers of the parties have been provided to the clerk. The clerk shall record the social security numbers provided by each applicant. The record of the social security numbers is confidential and is not open for public inspection.~~ An application recording notice of intention to marry is not open for public inspection for 50 years from the date of the application except that:

A. The names of the parties for whom intentions to marry are filed and the intended date of marriage are public records and open for public inspection; and

B. A person with a researcher identification card under Title 22, section 2706, subsection 8 is permitted to inspect records and may be issued a noncertified copy of an application.

Sec. 2. 22 MRSA §2702, sub-§3, as amended by PL 2009, c. 601, §6, is further amended to read:

3. Transmittal of certificates to other municipalities. Except as authorized by the state registrar or except if the birth is registered or will be registered on the electronic birth registration system implemented by the state registrar, when the parents of any child born are residents of any other municipality in this State, the clerk of the municipality where that live birth occurred shall transmit a copy of the certificate of the live birth to the clerk of the municipality where the parents reside.

2-5

Sec. 3. 22 MRSA §2703, as amended by PL 2009, c. 601, §8, is further amended to read:

§2703. Birth in unincorporated place

When a birth occurs in an unincorporated place, it must be reported to ~~the~~ a municipal clerk ~~in the municipality that is nearest to the place at which the birth took place~~ as specified by the state registrar and must be recorded, or registered in the electronic birth registration system, by the municipal clerk to whom the report is made. All such reports and records must be ~~made and recorded and returned~~ forwarded to the state registrar.

Sec. 4. 22 MRSA §2704, as amended by PL 2009, c. 601, §9, is further amended to read:

§2704. Registration of births and deaths at Togus

Certificates of live births, deaths and fetal deaths occurring at the ~~United States Department of Veterans Affairs at~~ federal facility known as Togus must be filed directly with the state registrar. The state registrar shall forward copies of all such certificates of live birth, death and fetal death to the clerk of the municipality where the parents of the child reside.

Sec. 5. 22 MRSA §2706, sub-§8, as amended by PL 2011, c. 58, §1, is further amended to read:

8. Genealogical research. Custodians of certificates and records of birth, marriage and death, including applications regarding notice of intentions to marry, shall permit inspection of records by and issue noncertified copies to researchers engaged in genealogical research who hold researcher identification cards, as specified by rule adopted by the department. The department shall adopt rules to implement this subsection. Rules adopted by the department pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

Sec. 6. 22 MRSA §2763, first ¶ is amended to read:

Whoever assumes the custody of a child of unknown parentage shall immediately report to the ~~local town or city clerk~~ Office of Data, Research and Vital Statistics in writing:

Sec. 7. 22 MRSA §2764, sub-§§1 and 2 are amended to read:

1. Certificate of live birth. A certificate of live birth on the prescribed form ~~shall~~ must be filed with the ~~clerk of the municipality where birth occurred~~ Office of Data, Research and Vital Statistics if the date of filing is more than 7 days but not more than ~~7 years~~ one year after the date of birth. The state registrar may prescribe the evidence of the facts of birth to be presented in the event none of the persons specified in section 2761 are available to sign the certificate.

2. Delayed registration of birth. When the birth occurred more than ~~7 years~~ one year prior to the date of filing, it ~~shall~~ must be registered on a form entitled "Delayed Registration of Birth." The form ~~shall~~ must provide for the following information and such other data as may be required by the department:

A. A statement by the applicant including the name and sex of the person whose birth is to be registered, the place and date of birth, the name and birthplace of the father~~,~~ and the maiden name and birthplace of the mother;

B. The signature of the registrant, or a parent or guardian if the registrant is under 15 years of age or is mentally incompetent;

C. The signature of the registrant ~~shall~~ must be acknowledged before an official authorized to take oaths;

D. A description of each document submitted in support of the delayed birth registration; and

E. The date of filing.

Sec. 8. 22 MRSA §2764, sub-§3, ¶A is amended to read:

A. If the birth occurred more than ~~7~~ one year but less than 15 years prior to the date of filing, the facts of birth stated by the applicant ~~shall~~ must be supported by at least 2 documents, only one of which may be an affidavit of personal knowledge; or

Sec. 9. 22 MRSA §2764, sub-§5 is amended to read:

5. Attested copy to municipality. After the delayed birth registration has been accepted, the state registrar shall forward ~~a certified~~ an attested copy to the clerk of the municipality where the birth occurred or, in case of a birth in an unincorporated place, to the municipal clerk specified by the state registrar.

APPROVED CHAPTER

STATE OF MAINE APR 12 '12 618

BY GOVERNOR PUBLIC LAW

IN THE YEAR OF OUR LORD

TWO THOUSAND AND TWELVE

H.P. 844 - L.D. 1138

An Act To Amend the Maine Tree Growth Tax Law and the Open Space Tax Law

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 36 MRSA §573, sub-§6-A is enacted to read:

6-A. Residential structure. "Residential structure" means a building used for human habitation as a seasonal or year-round residence. It does not include structures that are ancillary to the residential structure, such as a garage or storage shed.

Sec. 2. 36 MRSA §574-B, as amended by PL 2009, c. 434, §15, is further amended to read:

§574-B. Applicability

An owner of a parcel containing forest land may apply at the landowner's election by filing with the assessor the schedule provided for in section 579, except that this subchapter does not apply to any parcel containing less than 10 acres of forest land. For purposes of this subchapter, a parcel is deemed to include a unit of real estate, notwithstanding that it is divided by a road, way, railroad or pipeline, or by a municipal or county line. The election to apply requires the written consent of all owners of an interest in a parcel except for the State. For applications submitted on or after August 1, 2012, the size of the exclusion from classification under this subchapter for each structure located on the parcel and for each residential structure located on the parcel in shoreland areas is determined pursuant to section 574-C.

A parcel of land used primarily for growth of trees to be harvested for commercial use ~~shall be~~ is taxed according to this subchapter, ~~provided that~~ as long as the landowner complies with the following requirements:

2-6

1. Forest management and harvest plan. A forest management and harvest plan must be prepared for each parcel and updated every 10 years. The landowner shall file a sworn statement with the municipal assessor for a parcel in a municipality or with the State Tax Assessor for a parcel in the unorganized territory that a forest management and harvest plan has been prepared for the parcel;

2. Evidence of compliance with plan. The landowner must comply with the plan developed under subsection 1, and must submit, every 10 years to the municipal assessor in a municipality or the State Tax Assessor for parcels in the unorganized territory, a statement from a licensed professional forester that the landowner is managing the parcel according to schedules in the plan required under subsection 1; ~~and~~

3. Transfer of ownership. When land taxed under this subchapter is transferred to a new owner, within one year of the date of transfer, the new landowner must file with the municipal assessor or the State Tax Assessor for land in the unorganized territory one of the following:

A. A sworn statement indicating that a new forest management and harvest plan has been prepared; or

B. A statement from a licensed professional forester that the land is being managed in accordance with the plan prepared for the previous landowner.

The new landowner may not harvest or authorize the harvest of forest products for commercial use until a statement described in paragraph A or B is filed with the assessor. A person owning timber rights on land taxed under this subchapter may not harvest or authorize the harvest of forest products for commercial use until a statement described in paragraph A or B is filed with the assessor.

Parcels of land subject to section 573, subsection 3, paragraph B or C are exempt from the requirements under this ~~section~~ subsection.

For the purposes of this subsection, "transferred to a new owner" means the transfer of the controlling interest in the fee ownership of the land or the controlling interest in the timber rights on the land~~.~~; and

4. Attestation. Beginning August 1, 2012, when a landowner is required to provide to the assessor evidence that a forest management and harvest plan has been prepared for the parcel or updated pursuant to subsection 1, or when a landowner is required to provide evidence of compliance pursuant to subsection 2, the landowner must provide an attestation that the landowner's primary use for the forest land classified pursuant to this subchapter is to grow trees to be harvested for commercial use or that the forest land is land described in section 573, subsection 3, paragraphs A, B, C or E. The existence of multiple uses on an enrolled parcel does not render it inapplicable for tax treatment under this subchapter, as long as the enrolled parcel remains primarily used for the growth of trees to be harvested for commercial use.

Sec. 3. 36 MRSA §574-C is enacted to read:

§574-C. Reduction of parcels with structures; shoreland areas

If a parcel of land for which an owner seeks classification under this subchapter on or after August 1, 2012 contains a structure for which a minimum lot size is required under state law or by municipal ordinance, the owner in the schedule under section 579 shall apply the following reduction to the land to be valued under this subchapter.

1. Structures. For each structure located on the parcel for which a minimum lot size is required under state law or by municipal ordinance, the owner in the schedule under section 579 shall exclude from the forest land subject to valuation under this subchapter the area of land in the parcel containing the structure or structures, which may not be less than 1/2 acre.

2. Shoreland areas. For each residential structure located within a shoreland area, as identified in Title 38, section 435, the owner in the schedule under section 579 shall exclude from the forest land subject to valuation under this subchapter the area of land in the parcel containing the structure or structures, which may not be less than 1/2 acre, and the excluded parcel must include 100 feet of shoreland frontage or the minimum shoreland frontage required by the applicable minimum requirements of the zoning ordinance for the area in which the land is located, whichever is larger. If the parcel has less than 100 feet of shoreland frontage, the entire shoreland frontage must be excluded. This subsection does not apply to a structure that is used principally for commercial activities related to forest products that have commercial value as long as any residential use of the structure is nonrecreational, temporary in duration and purely incidental to the commercial use.

Sec. 4. 36 MRSA §581, sub-§1-A, as enacted by PL 2009, c. 577, §2, is amended to read:

1-A. Notice of compliance. No earlier than 185 days prior to a deadline established by section 574-B, if the landowner has not yet complied with the requirements of that section, the assessor must provide the landowner with written notice by certified mail informing ~~the landowner that failure to comply will result in the withdrawal of the property from taxation under this subchapter. The notice, at a minimum, must inform~~ the landowner of the statutory requirements that need to be met to comply with section 574-B and the date of the deadline for compliance ~~and that the consequences of withdrawal could include the assessment of substantial financial penalties against the owner~~ or by which the parcel may be transferred to open space classification pursuant to subchapter 10. The notice must also state that if the owner fails to meet the deadline for complying with section 574-B or transferring the parcel to open space classification, a supplemental assessment of $500 will be assessed and that continued noncompliance will lead to a subsequent supplemental assessment of $500. If the notice is issued less than 120 days before the deadline, the owner has 120 days from the date of the notice to provide the assessor with the documentation to achieve compliance with section 574-B or transfer the parcel to open space classification, and the notice must specify the date by which the owner must comply.

~~At the expiration of the deadline for compliance with section 574-B or 120 days from the date of the notice, whichever is later, if the landowner has failed to meet the requirements~~

~~of section 574-B, the assessor must withdraw the parcel from taxation under this subchapter and impose a withdrawal penalty under subsection 3.~~

If the landowner fails to provide the assessor with the documentation to achieve compliance with section 574-B or transfer the parcel to open space classification pursuant to subchapter 10 by the deadline specified in the notice, the assessor shall impose a $500 penalty to be assessed and collected as a supplemental assessment in accordance with section 713-B. The assessor shall send notification of the supplemental assessment by certified mail and notify the landowner that, no later than 6 months from the date of the 2nd notice, the landowner must comply with the requirements of section 574-B or transfer the parcel to open space classification pursuant to subchapter 10 and that failure to comply will result in an additional supplemental assessment of $500 and the landowner will have an additional 6-month period in which to comply with these requirements before the withdrawal of the parcel and the assessment of substantial financial penalties against the landowner.

At the expiration of 6 months, if the landowner has not complied with section 574-B or transferred the parcel to open space classification under subchapter 10, the assessor shall assess an additional $500 supplemental assessment. The assessor shall send notification of the 2nd supplemental assessment by certified mail and notify the landowner that, no later than 6 months from the date of the notice, the landowner must comply with the requirements of section 574-B or transfer the parcel to open space classification pursuant to subchapter 10 or the land will be withdrawn from the tree growth tax program.

If the landowner has not complied within 6 months from the date of the 2nd supplemental assessment, the assessor shall remove the parcel from taxation under this subchapter and assess a penalty for the parcel's withdrawal pursuant to subsection 3.

This subsection does not limit the assessor from issuing other notices or compliance reminders to property owners at any time in addition to the notice required by this subsection.

Sec. 5. 36 MRSA §1102, sub-§§4-A and 4-B are enacted to read:

4-A. Forest management and harvest plan. "Forest management and harvest plan" means a written document that outlines activities to regenerate, improve and harvest a standing crop of timber. A plan must include the location of water bodies and wildlife habitat as identified by the Department of Inland Fisheries and Wildlife. A plan may include, but is not limited to, schedules and recommendations for timber stand improvement and harvesting plans and recommendations for regeneration activities. A plan must be prepared by a licensed professional forester or a landowner and be reviewed and certified by a licensed professional forester as consistent with sound silvicultural practices.

4-B. Forested land. "Forested land" means land that is used in the growth of trees but does not include ledge, marsh, open swamp, bog, water and similar areas that are unsuitable for growing trees.

Sec. 6. 36 MRSA §1106-A, sub-§2, ¶E is enacted to read:

E. Managed forest open space land is eligible for the reduction set in paragraphs A, B and D and an additional 10%.

Sec. 7. 36 MRSA §1106-A, sub-§3, as amended by PL 2003, c. 414, Pt. B, §50 and affected by c. 614, §9, is further amended to read:

3. Definition of land eligible for additional percentage reduction. The following categories of open space land are eligible for the additional percentage reduction set forth in subsection 2, paragraphs B, C ~~and~~, D and E.

A. Permanently protected open space is an area of open space land that is eligible for an additional cumulative percentage reduction in valuation because that area is subject to restrictions prohibiting building development under a perpetual conservation easement pursuant to Title 33, chapter 7, subchapter ~~VIII-A~~ 8-A or as an open space preserve owned and operated by a nonprofit entity in accordance with section 1109, subsection 3, paragraph H.

B. Forever wild open space is an area of open space land that is eligible for an additional cumulative percentage reduction in valuation because it is permanently protected and subject to restrictions or committed to uses by a nonprofit entity in accordance with section 1109, subsection 3, paragraph H that ensure that in the future the natural resources on that protected property will remain substantially unaltered, except for:

(1) Fishing or hunting;

(2) Harvesting shellfish in the intertidal zone;

(3) Prevention of the spread of fires or disease; or

(4) Providing opportunities for low-impact outdoor recreation, nature observation and study.

C. Public access open space is an area of open space land, whether ordinary, permanently protected or forever wild, that is eligible for an additional cumulative percentage reduction in valuation because public access is by reasonable means and the applicant agrees to refrain from taking action to discourage or prohibit daytime, nonmotorized and nondestructive public use. The applicant may permit, but is not obligated to permit as a condition of qualification for public access status, hunting, snowmobiling, overnight use or other more intensive outdoor recreational uses. The applicant, without disqualifying land from status as public access open space, may impose temporary or localized public access restrictions to:

(1) Protect active habitat of endangered species listed under Title 12, chapter 925, subchapter 3;

(2) Prevent destruction or harm to fragile protected natural resources under Title 38, chapter 3, subchapter 1, article 5-A; or

(3) Protect the recreational user from any hazardous area.

D. Managed forest open space land is an area of open space land whether ordinary, permanently protected pursuant to paragraph A or public access pursuant to paragraph C containing at least 10 acres of forested land that is eligible for an

additional cumulative percentage reduction in valuation because the applicant has provided proof of a forest management and harvest plan. A forest management and harvest plan must be prepared for each parcel of managed forest open space land and updated every 10 years. The landowner must comply with the forest management and harvest plan and must submit every 10 years to the municipal assessor for parcels in a municipality or the State Tax Assessor for parcels in the unorganized territory a statement from a licensed professional forester that the landowner is managing the parcel according to the forest management and harvest plan. Failure to comply with the forest management and harvest plan results in the loss of the additional cumulative percentage reduction under this paragraph for 10 years. The assessor or the assessor's duly authorized representative may enter and examine the forested land and may examine any information in the forest management and harvest plan submitted by the owner. A copy of the forest management and harvest plan must be made available to the assessor to review upon request. For the purposes of this paragraph, "to review" means to see or possess a copy of a forest management and harvest plan for a reasonable amount of time to verify that the forest management and harvest plan exists or to facilitate an evaluation as to whether the forest management and harvest plan is appropriate and is being followed. Upon completion of a review, the forest management and harvest plan must be returned to the owner or an agent of the owner. A forest management and harvest plan provided in accordance with this section is confidential and is not a public record as defined in Title 1, section 402, subsection 3.

Sec. 8. 36 MRSA §1112, 3rd ¶, as amended by PL 2011, c. 404, §2, is further amended to read:

A penalty may not be assessed at the time of a change of use from the farmland classification of land subject to taxation under this subchapter to the open space classification of land subject to taxation under this subchapter. A penalty may not be assessed upon the withdrawal of open space land from taxation under this subchapter if the owner applies for the land to be classified as and the land is accepted for classification as timberland under subchapter 2-A. There also is no penalty imposed when land classified as timberland is accepted for classification as open space land. A penalty may not be assessed upon withdrawal of open space land from taxation under this subchapter if the owner applies for the land to be classified as and the land is accepted for classification as farmland under this subchapter. A penalty may not be assessed upon withdrawal of land enrolled under the Maine Tree Growth Tax Law if the owner applies for the land to be classified as and the land is accepted for classification as farmland under this chapter. The recapture penalty for withdrawal from farmland classification within 10 years of a transfer from either open space tax classification or timberland tax classification is the same imposed on withdrawal from the prior tax classification, open space or tree growth. The recapture penalty for withdrawal from farmland classification more than 10 years after such a transfer will be the regular farmland recapture penalty provided for in this section. In the event a penalty is later assessed under subchapter 2-A, the period of time that the land was taxed as farmland or as open space land under this subchapter must be included for purposes of establishing the amount of the penalty. The recapture penalty for withdrawal from open space classification within 10 years of a transfer from tree growth classification occurring on or after August 1, 2012 is the same

that would be imposed if the land were being withdrawn from the tree growth classification. The recapture penalty for withdrawal from open space classification more than 10 years after such a transfer will be the open space recapture penalty provided for in this section.

Sec. 9. Unorganized territory property withdrawn between September 20, 2007 and July 1, 2010. Any property within the unorganized territory that was withdrawn from classification under the Maine Tree Growth Tax Law between September 20, 2007 and July 1, 2010 and returned to classification under the Maine Tree Growth Tax Law pursuant to Public Law 2009, chapter 577, section 3 is for all purposes deemed not to have been withdrawn from the Maine Tree Growth Tax Law classification during that period of time.

APPROVED CHAPTER

APR 12 '12 619

BY GOVERNOR PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND TWELVE

S.P. 459 - L.D. 1470

An Act To Evaluate the Harvesting of Timber on Land Taxed under the Maine Tree Growth Tax Law

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 36 MRSA §575-A, as enacted by PL 2001, c. 603, §5, is repealed and the following enacted in its place:

§575-A. Determining compliance with forest management and harvest plan

1. Assistance to assessor. Upon request of a municipal assessor or the State Tax Assessor and in accordance with section 579, the Director of the Bureau of Forestry within the Department of Conservation may provide assistance in evaluating a forest management and harvest plan to determine whether the plan meets the definition of a forest management and harvest plan in section 573, subsection 3-A. Upon request of a municipal assessor or the State Tax Assessor, the Director of the Bureau of Forestry may provide assistance in determining whether a harvest or other silvicultural activity conducted on land enrolled under this subchapter complies with the forest management and harvest plan prepared for that parcel of land. When assistance is requested under this section and section 579, the Director of the Bureau of Forestry or the director's designee may enter and examine forest land for the purpose of determining compliance with the forest management and harvest plan.

2. Random sampling and report. The Director of the Bureau of Forestry within the Department of Conservation is authorized to conduct periodic random sampling of land enrolled under this subchapter to identify any differences in compliance with forest management and harvest plans based on location or type of parcel and to assess overall compliance with the requirements of this subchapter. For the purposes of this subsection, the Director of the Bureau of Forestry or the director's designee may:

A. With appropriate notification to the landowner, enter and examine forest land for the purpose of determining compliance with the forest management and harvest plan pursuant to section 574-B;

B. Request and review a forest management and harvest plan required under section 574-B, which must be provided by a landowner or the landowner's agent upon request; and

C. Request and review an expired forest management and harvest plan, which must be provided by a landowner or the landowner's agent upon request, if the expired plan is in the possession of the landowner or the landowner's agent.

A forest management and harvest plan provided to the Director of the Bureau of Forestry or the director's designee under this subsection is confidential. Information collected pursuant to this subsection is confidential and is not a public record as defined in Title 1, section 402, subsection 3, except that the director shall publish at least one summary report, which may not reveal the activities of any person and that is available as a public record. This subsection is repealed on December 31, 2014.

Sec. 2. Report. The Director of the Bureau of Forestry within the Department of Conservation shall provide a report to the joint standing committee of the Legislature having jurisdiction over taxation matters no later than March 1, 2014. The report must include: findings from the periodic random sampling of land enrolled under the Maine Tree Growth Tax Law performed pursuant to the Maine Revised Statutes, Title 36, section 575-A, subsection 2, including any findings related to any differences in compliance issues based on the location of parcels, such as coastal and waterfront properties as compared to other parcels; a summary of data concerning violations and enforcement activities; an assessment of the effectiveness of the Maine Tree Growth Tax Law in promoting the harvesting of fiber for commercial purposes and its impact on the fiber industry; and recommendations to address any problems identified and to ensure that parcels enrolled under the Maine Tree Growth Tax Law meet the requirements of the law.

Passed by legislature 5/16/12

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND TWELVE

H.P. 702 - L.D. 958

Resolve, To Authorize the Legislature To Contract for an Independent Review To Evaluate the Essential Programs and Services Funding Act

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, since enactment of the Essential Programs and Services Funding Act established under the Maine Revised Statutes, Title 20-A, chapter 606-B, the Legislature has debated both incremental and comprehensive funding reform proposals to remedy perceived flaws in the school funding formula and the state subsidy distribution mechanism; and

Whereas, in order to obtain information in a timely manner to make informed policy decisions, the Legislature should provide for an independent review of education finance policies and practices associated with the Essential Programs and Services Funding Act; and

Whereas, the Legislature should promptly contract with a qualified research entity to conduct an objective evaluation of the Essential Programs and Services Funding Act as it relates to the best practices of other states' school funding systems that are considered to be fair and equitable; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1. Legislature to contract for independent review of the essential programs and services model. Resolved: That the Legislature, through the Joint Standing Committee on Education and Cultural Affairs, may contract with a qualified research entity to conduct pursuant to sections 5 and 6 an independent review of the Essential Programs and Services Funding Act established under the Maine Revised Statutes, Title 20-A, chapter 606-B; and be it further

Sec. 2. Assistance; request for proposals process. Resolved: That, at the direction of the Joint Standing Committee on Education and Cultural Affairs, referred to

in this resolve as "the joint standing committee," the Office of Program Evaluation and Government Accountability, referred to in this resolve as "the office," shall develop and administer a request for proposals process to permit the Legislature, through the joint standing committee, to award a contract pursuant to section 1. The office, with the advice and assistance of the Independent Review Advisory Committee, established under section 4 and referred to in this resolve as "the advisory committee," and in consultation with and with the approval of the joint standing committee, shall:

1. Develop and administer a request for proposals process in accordance with section 3;

2. Administer the contract entered into pursuant to section 1, including monitoring the research entity's performance in meeting deadlines, providing deliverables pursuant to sections 5 and 6 and complying with other terms of the contract; and

3. Within available resources, provide other assistance to the joint standing committee relating to the contract and the purposes of this resolve; and be it further

Sec. 3. Request for proposals; standards and selection process. Resolved: That the office, with the advice and assistance of the advisory committee, and in consultation with and with the approval of the joint standing committee, shall administer a request for proposals process in accordance with this section.

1. The qualifications of a research entity providing proposals must include, but are not limited to, the financial, technical and operational capacity of the entity to conduct state-level education policy research and fiscal analysis, as demonstrated by the entity's professional experience and expertise.

2. With the approval of the joint standing committee, the office shall issue a request for proposals and publish notice of the request on the Legislature's publicly accessible website and through advertisements in 2 or more public newspapers circulated wholly or in part in the State and may provide any further notice of the request to any other media or entities, as approved by the joint standing committee. The notice must provide that the office will accept, for 30 days after the first date of publication, proposals from qualified research entities that meet the standards approved by the joint standing committee.

3. After proposals have been received and the period for accepting proposals has expired, the office, with the advice and counsel of the advisory committee, shall evaluate the proposals and present a ranking of or recommendations regarding the proposals to the joint standing committee. The joint standing committee shall review the recommendations and choose the proposal it wishes to accept. The joint standing committee shall notify the Executive Director of the Legislative Council of its selection of a proposal. The executive director shall execute a contract with the selected research entity on behalf of the Legislature.

4. Notwithstanding the Maine Revised Statutes, Title 1, section 402, except for the name and mailing address of a research entity that submits a proposal, the proposal and all other materials prepared, used or submitted in connection with the proposal are

confidential and are not subject to public review until the period for accepting proposals has expired; and be it further

Sec. 4. Independent Review Advisory Committee. Resolved: That the Independent Review Advisory Committee is established to advise the office and joint standing committee on matters related to developing a request for proposals and administering the contract entered into pursuant to this resolve. The advisory committee consists of the following members:

1. The Commissioner of Education or the commissioner's designee;

2. The Chair of the State Board of Education or the chair's designee;

3. A Co-director of the Education Research Institute established pursuant to the Maine Revised Statutes, Title 20-A, section 10;

4. The Executive Director of the Maine School Management Association or the executive director's designee; and

5. The Director of the Margaret Chase Smith Policy Center at the University of Maine or the director's designee who is a faculty researcher, research associate or policy fellow at the Margaret Chase Smith Policy Center.

The advisory committee shall elect a chair from among its members. The office shall provide to the members of the joint standing committee notice of the meetings of the office with the advisory committee so that members of the joint standing committee may attend; and be it further

Sec. 5. Scope of the review. Resolved: That the contract entered into pursuant to section 1 must require an objective evaluation of the Essential Programs and Services Funding Act and must require a review of the school funding formula. The evaluation must include, but is not limited to, comparisons between municipalities within this State and between this State and other comparable states and must address the following issues:

1. Whether the school funding formula and the subsidy distribution method in the laws of the State are fair and equitable and how the Essential Programs and Services Funding Act compares to other states' school funding systems that are considered to be fair and equitable;

2. The various ways that school funding systems in other states determine and calculate the costs and components of a comprehensive education system and the advantages and disadvantages of those different approaches;

3. The percentage of the total cost of public education that is provided by the state in other states' school funding systems and how the state share is funded in the other states;

4. The advantages and disadvantages of calculating state aid to school administrative units based on student enrollment count and property valuation;

5. How other states define a municipality's ability to pay for public education and what the arguments are in favor of and against those definitions;

6. The effectiveness of state aid provided by other states' school funding systems to support economically disadvantaged students in local school districts as compared to the support provided to economically disadvantaged students in school administrative units under the laws of the State; and

7. Changes that should be made to the definitions of the cost components and to the funding distribution method in the Essential Programs and Services Funding Act to provide adequate resources for a comprehensive education system and to more accurately determine the percentage of essential programs and services funding levels that each school administrative unit should receive from the State; and be it further

Sec. 6. General requirements of the review. Resolved: That the contract entered into pursuant to section 1 must require:

1. A review of previous studies and available data related to the State's school funding laws; a review of school funding systems in comparable states; an assessment of each of the issues in section 5, including the arguments in favor of and against the provisions of the State's school funding laws; recommended alternatives to the Essential Programs and Services Funding Act; and a review of:

A. The existing studies of the Essential Programs and Services Funding Act, including research that was conducted to develop the State's school funding system and research conducted since the enactment of the Essential Programs and Services Funding Act;

B. The existing school finance data collected by the Department of Education and state and local tax revenue data collected by the Department of Administrative and Financial Services, Bureau of Revenue Services related to the education finance system under the Essential Programs and Services Funding Act; and

C. The education finance systems in comparable states with an emphasis on other states in New England and states committed to education quality, student equity and taxpayer equity; and

2. An in-depth analysis of the recommended alternatives to the Essential Programs and Services Funding Act included in subsection 1 and an evaluation of:

A. The recommended alternatives necessary to provide adequate resources for a comprehensive education system and to more accurately determine the percentage of essential programs and services funding levels that each school administrative unit should receive from the State;

B. The recommended alternatives to the definitions of the cost components and to the funding distribution method in the Essential Programs and Services Funding Act; and

C. The costs and benefits of the recommended alternatives, including comparative analyses and calculations related to education quality, student equity and taxpayer equity.

The Department of Education, the Department of Administrative and Financial Services, Bureau of Revenue Services and the Education Research Institute established pursuant to the Maine Revised Statutes, Title 20-A, section 10 shall provide the qualified research entity selected with access to previous reports on school funding in the State and access to database information necessary to carry out the evaluation.

The contract entered into pursuant to section 1 must require the qualified research entity selected to provide opportunities for input from education stakeholder groups in the State as part of its evaluation; and be it further

Sec. 7. Disqualification. Resolved: That the Education Research Institute established pursuant to the Maine Revised Statutes, Title 20-A, section 10, due to its prior involvement with the development, review and analysis of the essential programs and services funding model, is disqualified from being considered or selected to enter into the contract pursuant to section 1; and be it further

Sec. 8. Preliminary and final reports. Resolved: That the qualified research entity selected to conduct the independent review pursuant to this resolve shall present a preliminary report of the results of the review under section 6, subsection 1 to the joint standing committee of the Legislature having jurisdiction over education and cultural affairs no later than April 1, 2013. The research entity shall present the final report, including the results of the review under section 6, subsection 2, to the joint standing committee of the Legislature having jurisdiction over education and cultural affairs by December 1, 2013. The joint standing committee of the Legislature having jurisdiction over education and cultural affairs may submit a bill relating to the final report to the Second Regular Session of the 126th Legislature; and be it further

Sec. 9. Suspension of contract to review essential programs and services components. Resolved: That, notwithstanding the Maine Revised Statutes, Title 20-A, section 15689-A, subsection 3, for fiscal year 2011-12 and fiscal year 2012-13, the Commissioner of Education may not contract with a statewide education research institute to review certain cost components of the Essential Programs and Services Funding Act in accordance with the schedule established in Title 20-A, section 15686-A; and be it further

Sec. 10. Contract to compile and analyze education data. Resolved: That, notwithstanding the Maine Revised Statutes, Title 20-A, section 15689-A, subsection 6, for fiscal year 2011-12 and fiscal year 2012-13, the Commissioner of Education and the Legislature may contract with a statewide education research institute for the compilation and analysis of education data in accordance with Title 20-A, section 10, except that the contract for these 2 fiscal years may not exceed the balance of funds remaining after funds allocated for this purpose are transferred pursuant to this resolve to the Legislature to fund the contract authorized under section 1; and be it further

Sec. 11. Committee meetings authorized. Resolved: That the joint standing committee may meet up to 4 times to carry out its responsibilities under this resolve; and be it further

Sec. 12. Appropriations and allocations. Resolved: That the following appropriations and allocations are made.

EDUCATION, DEPARTMENT OF

General Purpose Aid for Local Schools 0308

Initiative: Deappropriates funds no longer required for the contract to review the cost components of the Essential Programs and Services Funding Act pursuant to the Maine Revised Statutes, Title 20-A, section 15689-A, subsection 3 and for a portion of the contract with a statewide education policy research institute for the compilation and analysis of education data in accordance with the provisions established pursuant to Title 20-A, section 10.

GENERAL FUND	**2011-12**	**2012-13**
All Other	($150,000)	($300,000)
GENERAL FUND TOTAL	($150,000)	($300,000)

EDUCATION, DEPARTMENT OF DEPARTMENT TOTALS	**2011-12**	**2012-13**
GENERAL FUND	**($150,000)**	**($300,000)**
DEPARTMENT TOTAL - ALL FUNDS	**($150,000)**	**($300,000)**

LEGISLATURE

Legislature 0081

Initiative: Provides funds for a contract to conduct an independent review of the school funding formula and related state subsidy distribution method in the Essential Programs and Services Funding Act. Funds appropriated for this purpose may not lapse but must be carried forward to be used to complete the independent review authorized by this resolve.

GENERAL FUND	**2011-12**	**2012-13**
All Other	$150,000	$300,000
GENERAL FUND TOTAL	$150,000	$300,000

LEGISLATURE DEPARTMENT TOTALS	2011-12	2012-13
GENERAL FUND	$150,000	$300,000
DEPARTMENT TOTAL - ALL FUNDS	$150,000	$300,000

SECTION TOTALS	2011-12	2012-13
GENERAL FUND	$0	$0
SECTION TOTAL - ALL FUNDS	$0	$0

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SENATE

EARLE L. MCCORMICK, District 21, Chair
NICHI S. FARNHAM, District 32
MARGARET M. CRAVEN, District 16

JANE ORBETON, Legislative Analyst
ANNA BROOME, Legislative Analyst
LISA M. COTE, Committee Clerk

HOUSE

MEREDITH N. STRANG BURGESS, Cumberland, Chair
LESLIE T. FOSSEL, Alna
RICHARD S. MALABY, Hancock
BETH A. O'CONNOR, Berwick
DEBORAH J. SANDERSON, Chelsea
HEATHER W. SIROCKI, Scarborough
MARK W. EVES, North Berwick
MATTHEW J. PETERSON, Rumford
LINDA F. SANBORN, Gorham
PETER C. STUCKEY, Portland

State of Maine
ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE
COMMITTEE ON HEALTH AND HUMAN SERVICES

January 25, 2012

Senator David R. Hastings, III, Chair
Right to Know Advisory Committee
13 State House Station
Augusta, ME 04333

Re: Questions referred to the Health and Human Services Committee from the work of the Public Records Exceptions Subcommittee

Dear Senator Hastings:

The Health and Human Services Committee has considered three questions referred by the Right to Know Advisory Committee resulting from the work of the Public Records Exceptions Subcommittee. The HHS Committee has voted on all three questions and reports the following:

1. With regard to the Community-Right-to-Know Act, Title 22, sections 1696-D and 1696-F, the HHS Committee defers to the expertise and broader knowledge of the Environment and Natural Resources Committee.

2. With regard to the Maine Managed Care Insurance Plan, Title 22, section 3188, and the Community Health Access Program, Title 22, section 3192, the HHS Committee recommends that both sections be repealed in their entirety.

3. With regard to the Attorney General maintaining lists of licensed and unlicensed tobacco retailers pursuant to Title 22, section 1555-D, subsection 1, the HHS Committee recommends that subsection 1 be repealed.

Thank you for requesting the recommendations of the HHS Committee.

Sincerely,

Sen. Earle L. McCormick
Senate Chair

Rep. Meredith N. Strang Burgess
House Chair

c: Members, Health and Human Services Committee
Sen. Thomas B. Saviello, Senate Chair, ENR Committee
Rep. James M. Hamper, House Chair, ENR Committee
Peggy Reinsch, OPLA
Colleen McCarthy Reid, OPLA

22 §8754. DIVISION DUTIES

The division has the following duties under this chapter. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

1. Initial review; other action. Upon receipt of a notification or report of a sentinel event, the division shall complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division. Upon receipt of a notification or report of a suspected sentinel event the division shall determine whether the event constitutes a sentinel event and complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division. The division may conduct on-site reviews of medical records and may retain the services of consultants when necessary to the division.

A. The division may conduct on-site visits to health care facilities to determine compliance with this chapter. [2009, c. 358, §4 (NEW).]

B. Division personnel responsible for sentinel event oversight shall report to the division's licensing section only incidences of immediate jeopardy and each condition of participation in the federal Medicare program related to the immediate jeopardy for which the provider is out of compliance. [2009, c. 358, §4 (NEW).]

[2009, c. 358, §4 (AMD) .]

2. Procedures. The division shall adopt procedures for the reporting, reviewing and handling of information regarding sentinel events. The procedures must provide for electronic submission of notifications and reports.

[2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF) .]

3. Confidentiality. Notifications and reports filed pursuant to this chapter and all information collected or developed as a result of the filing and proceedings pertaining to the filing, regardless of format, are confidential and privileged information.

A. Privileged and confidential information under this subsection is not:

(1) Subject to public access under Title 1, chapter 13, except for data developed from the reports that do not identify or permit identification of the health care facility;

(2) Subject to discovery, subpoena or other means of legal compulsion for its release to any person or entity; or

(3) Admissible as evidence in any civil, criminal, judicial or administrative proceeding. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

B. The transfer of any information to which this chapter applies by a health care facility to the division or to a national organization that accredits health care facilities may not be treated as a waiver of any privilege or protection established under this chapter or other laws of this State. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

C. The division shall take appropriate measures to protect the security of any information to which this chapter applies. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

D. This section may not be construed to limit other privileges that are available under federal law or other laws of this State that provide for greater peer review or confidentiality protections than the peer review and confidentiality protections provided for in this subsection. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

E. For the purposes of this subsection, "privileged and confidential information" does not include:

(1) Any final administrative action;

(2) Information independently received pursuant to a 3rd-party complaint investigation conducted pursuant to department rules; or

(3) Information designated as confidential under rules and laws of this State. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

This subsection does not affect the obligations of the department relating to federal law.

[2009, c. 358, §5 (AMD) .]

4. Report. The division shall submit an annual report by February 1st each year to the Legislature, health care facilities and the public that includes summary data of the number and types of sentinel events of the prior calendar year by type of health care facility, rates of change and other analyses and an outline of areas to be addressed for the upcoming year.

[2009, c. 358, §6 (AMD) .]

SECTION HISTORY
2001, c. 678, §1 (NEW). 2001, c. 678, §3 (AFF). 2009, c. 358, §§4-6 (AMD).

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 26 – 39-A

Revised 5/29/2012 8:38 AM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION
1	26	3		Title 26, section 3, relating to information, reports and records of the Director of Labor Standards within the Department of Labor
2	26	43		Title 26, section 43, relating to the names of persons, firms and corporations providing information to the Department of Labor, Bureau of Labor Standards
3	26	665	1	Title 26, section 665, subsection 1, relating to records submitted to the Director of Labor Standards within the Department of Labor by an employer concerning wages
4	26	685	3	Title 26, section 685, subsection 3, relating to substance abuse testing by an employer
5	26	934		Title 26, section 934, relating to report of the State Board of Arbitration and Conciliation in labor dispute
6	26	939		Title 26, section 939, relating to information disclosed by a party to the State Board of Arbitration and Conciliation
7	26	1082	7	Title 26, section 1082, subsection 7, relating to employers' unemployment compensation records concerning individual information
8	27	121		Title 27, section 121, relating to library records concerning identity of patrons and use of books and materials
9	27	377		Title 27, section 377, relating to the location of a site in possession of a state agency for archeological research
10	28-A	755		Title 28-A, section 755, relating to liquor licensees' business and financial records
11	29-A	152	3	Title 29-A, section 152, subsection 3, relating to the Secretary of State's data processing information files concerning motor vehicles
12	29-A	253		Title 29-A, section 253, relating to motor vehicle records concerning certain nongovernmental vehicles
13	29-A	255	1	Title 29-A, section 255, subsection 1, relating to motor vehicle records when a protection order is in effect
14	29-A	257		Title 29-A, section 257, relating to the Secretary of State's motor vehicle information technology system
15	29-A	517	4	Title 29-A, section 517, subsection 4, relating to motor vehicle records concerning unmarked law enforcement vehicles
16	29-A	1258	7	Title 29-A, section 1258, subsection 7, relating to the competency of a person to operate a motor vehicle
17	29-A	1401	6	Title 29-A, section 1401, subsection 6, relating to driver's license digital images
18	30-A	503	1-A	Title 30-A, section 503, subsection 1-A, relating to county personnel records concerning the use of force
19	30-A	503	1	Title 30-A, section 503, subsection 1, relating to county personnel records
20	30-A	2702	1	Title 30-A, section 2702, subsection 1, relating to municipal personnel records
21	30-A	2702	1-A	Title 30-A, section 2702, subsection 1-A, relating to municipal personnel records concerning the use of force
22	30-A	4706	1	Title 30-A, section 4706, subsection 1, relating to municipal housing authorities
23	30-A	5242	13	Title 30-A, section 5242, subsection 13, relating to tax increment financing districts
24	32	85	3	Title 32, section 85, subsection 3, relating to criminal history record information for an applicant seeking initial licensure by the Emergency Medical Services Board
25	32	91-B	1	Title 32, section 91-B, subsection 1, relating to quality assurance activities of an emergency medical services quality assurance committee

	TITLE	SECTION	SUB-SECTION	DESCRIPTION
26	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph A, relating to personal contact information and personal health information of applicant for credentialing by Emergency Medical Services Board
27	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph B, relating to confidential information as part of application for credentialing by Emergency Medical Services Board
28	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph C, relating to information submitted to the trauma incidence registry under section 87-B
29	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph D, relating to examination questions used for credentialing by Emergency Medical Services Board
30	32	2105-A	3	Title 32, section 2105-A, subsection 3, relating to information provided by a health care facility to the State Board of Nursing that identify a patient
31	32	2109		Title 32, section 2109, relating to personal contact and health information of nurse applicants and licensees
32	32	2599		Title 32, section 2599, relating to medical staff reviews and hospital reviews – osteopathic physicians
33	32	2600-A		Title 32, section 2600-A, relating to personal contact and health information of osteopathic physician applicants and licensees
34	32	3296		Title 32, section 3296, relating to Board of Licensure in Medicine medical review committees
35	32	3300-A		Title 32, section 3300-A, relating to Board of Licensure in Medicine personal contact and health information about applicants and licensees
36	32	6115	1	Title 32, section 6115, subsection 1, relating to financial information provided to the Director of the Office of Consumer Credit Regulation within the Department of Professional and Financial Regulation: money transmitters
37	32	9418		Title 32, section 9418, relating to applications for private security guard license
38	32	11305	3	Title 32, section 11305, subsection 3, relating to administration of the Maine Commodity Code by the Securities Administrator
39	32	13006		Title 32, section 13006, relating to real estate grievance and professional standards committees hearings
40	32	16607	2	Title 32, section 16607, subsection 2, relating to records obtained or filed under the Maine Securities Act
41	33	1971	4	Title 33, section 1971, subsection 4, relating to information derived from unclaimed property reports
42	34-A	1212		Title 34-A, section 1212, relating to personal information of Department of Corrections employees and contractors
43	34-A	1216	1	Title 34-A, section 1216, subsection 1, relating to orders of commitment, medical and administrative records, applications and reports pertaining to any person receiving services from Department of Corrections
44	34-A	1216	6	Title 34-A, section 1216, subsection 6, relating to documents used to screen or assess clients of the Department of Corrections
45	34-A	5210	4	Title 34-A, section 5210, subsection 4, relating to the State Parole Board report to the Governor
46	34-A	9877	4	Title 34-A, section 9877, subsection 4, relating to the release by the Interstate Commission for Adult Offender Supervision of records that adversely affect personal privacy rights or proprietary interests
47	34-A	9903	8	Title 34-A, section 9903, subsection 8, relating to the release by the Interstate Commission for Juveniles of records that adversely affect personal privacy rights or proprietary interests
48	34-B	1207	1	Title 34-B, section 1207, subsection 1, relating to mental health and mental retardation orders of commitment and medical and administrative records, applications and reports pertaining to any DHHS client

	TITLE	SECTION	SUB-SECTION	DESCRIPTION
49	34-B	1223	10	Title 34-B, section 1223, subsection 10, relating to information about a person with mental retardation or autism accessed by the Maine Developmental Services Oversight and Advisory Board
50	34-B	1931	6	Title 34-B, section 1931, subsection 6, relating to the records of the Mental Health Homicide, Suicide and Aggravated Assault Review Board
51	34-B	3864	12	Title 34-B, section 3864, subsection 12, relating to abstract of involuntary commitment order provided to State Bureau of Identification
52	34-B	3864	5	Title 34-B, section 3864, subsection 5, relating to mental health involuntary commitment hearings
53	34-B	5005	6	Title 34-B, section 5005, subsection 6, relating to records and accounts related to request for action by Office of Advocacy for person with mental retardation or autism
54	34-B	5475	3	Title 34-B, section 5475, subsection 3, relating to mental retardation judicial certification hearings
55	34-B	5476	6	Title 34-B, section 5476, subsection 6, relating to mental retardation judicial commitment hearings
56	34-B	5605	15	Title 34-B, section 5605, subsection 15, relating to records of persons receiving mental retardation or autism services
57	34-B	7014	1	Title 34-B, section 7014, subsection 1, relating to court proceedings concerning sterilization
58	35-A	114	1	Title 35-A, section 114, subsection 1, relating to utility personnel records, not open to PUC
59	35-A	704	5	Title 35-A, section 704, subsection 5, relating to utility records concerning customer information, Consumer Assistance Division
60	35-A	1311-A		Title 35-A, section 1311-A, relating to Public Utilities Commission protective orders
61	35-A	1311-B	1, 2, 4	Title 35-A, section 1311-B, subsections 1, 2 and 4, relating to public utility technical operations information
62	35-A	1316-A		Title 35-A, section 1316-A, relating to Public Utilities Commission communications concerning utility violations
63	35-A	8703	5	Title 35-A, section 8703, subsection 5, relating to telecommunications relay service communications
64	35-A	9207	1	Title 35-A, section 9207, subsection 1, relating to information about communications service providers
65	36	575-A	2	Title 36, section 575-A, subsection 2, relating to forest management and harvest plan provided to Bureau of Forestry and information collected for compliance assessment for Tree Growth Tax Law
66	36	579		Title 36, section 579, relating to the Maine Tree Growth Tax Law concerning forest management plans
67	36	581-G	3	Title 12, section 8611, subsection 3, relating to addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres
68	36	841	2	Title 36, section 841, subsection 2, relating to property tax abatement application information and proceedings
69	36	1106-A	3	Title 36, section 1106-A, subsection 3, paragraph D, relating to forest management and harvest plan made available for Farm and Open Space Tax Law
70	36	4315	1-A	Title 36, section 4315, subsection 1-A, relating to the transportation of wild blueberries
71	36	4316	4	Title 36, section 4316, subsection 4, relating to wild blueberries audits by Department of Agriculture
72	36	6760		Title 36, section 6760, relating to employment tax increment financing
73	37-B	506		Title 37-B, section 506, relating to Department of Defense, Veterans and Emergency Management, Bureau of Maine Veterans' Services benefits

Existing Public Records Exceptions, Titles 26 – 39-A

Revised 5/29/2012 8:38 AM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION
74	37-B	708	3	Title 37-B, section 708, subsection 3, relating to documents collected or produced by the Homeland Security Advisory Council
75	37-B	797	7	Title 37-B, section 797, subsection 7, relating to Department of Defense, Veterans and Emergency Management, Maine Emergency Management Agency reports of hazardous substance transportation routes
76	38	100-A	1	Title 38, section 100-A, subsection 1, relating to complaints and investigative records concerning vessel pilots
77	38	345-A	4	Title 38, section 345-A, subsection 4, relating to information submitted to the Department of Environmental Protection and Board of Environmental Protection concerning trade secrets
78	38	414	6	Title 38, section 414, subsection 6, relating to records and reports obtained by the Board of Environmental Protection in water pollution control license application procedures
79	38	470-D		Title 38, section 470-D, relating to individual water withdrawal reports
80	38	585-B	6	Title 38, section 585-B, subsection 6, paragraph C, relating to mercury reduction plans for air emission source emitting mercury
81	38	585-C	2	Title 38, section 585-C, subsection 2, relating to the hazardous air pollutant emissions inventory
82	38	1310-B	2	Title 38, section 1310-B, subsection 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans
83	38	1610	6-A	Title 38, section 1610, subsection 6-A, paragraph F, relating to annual sales data on the number and type of computer monitors and televisions sold by the manufacturer in this State over the previous 5 years
84	38	1661-A	4	Title 38, section 1661-A, subsection 4, relating to information submitted to the Department of Environmental Protection concerning mercury-added products
85	38	2307-A	1, 5	Title 38, section 2307-A, subsections 1 and 5, relating to information submitted to the Department of Environmental Protection concerning toxics use and hazardous waste reduction (REPEALED 7/1/12)
86	39-A	153	5	Title 39-A, section 153, subsection 5, relating to the Workers' Compensation Board abuse investigation unit
87	39-A	153	9	Title 39-A, section 153, subsection 9, relating to the Workers' Compensation Board audit working papers
88	39-A	355-B	11	Title 39-A, section 355-B, subsection 11, relating to records and proceedings of the Workers' Compensation Supplemental Benefits Oversight Committee concerning individual claims
89	39-A	403	3	Title 39-A, section 403, subsection 3, relating to workers' compensation self-insurers proof of solvency and financial ability to pay
90	39-A	403	15	Title 39-A, section 403, subsection 15, relating to records of workers' compensation self-insurers
91	39-A	409		Title 39-A, section 409, relating to workers' compensation information filed by insurers concerning the assessment for expenses of administering self-insurers' workers' compensation program

APPROVED CHAPTER

JUN 08 '11 264

BY GOVERNOR PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND ELEVEN

H.P. 817 - L.D. 1082

An Act Concerning the Protection of Personal Information in Communications with Elected Officials

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA §402, sub-§3, ¶C-1 is enacted to read:

C-1. Information contained in a communication between a constituent and an elected official if the information:

(1) Is of a personal nature, consisting of:

(a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

(b) Credit or financial information;

(c) Information pertaining to the personal history, general character or conduct of the constituent or any member of the constituent's immediate family;

(d) Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or

(e) An individual's social security number; or

(2) Would be confidential if it were in the possession of another public agency or official;

Sec. 2. Right To Know Advisory Committee. The Right To Know Advisory Committee, as established in the Maine Revised Statutes, Title 1, section 411, subsection 1, shall examine the benefit of public disclosure of elected officials' e-mails and other records balanced with the availability of technology and other systems necessary to maintain the records and to provide public access. The Right To Know Advisory Committee's findings and any recommendations must be included in its 2012 annual report pursuant to Title 1, section 411, subsection 10.

4-1

Right to Know Advisory Committee
Legislative Subcommittee
DRAFT: Using technology to conduct public proceedings

PART A

Sec. A-1. 1 MRSA § 403-A is enacted to read:

§403-A. Public proceedings through other means of communication

This section governs public proceedings, including executive sessions, during which public or governmental business is discussed or transacted through telephonic, video, electronic or other means of communication.

1. Requirements. A body subject to this subchapter may conduct a public proceeding during which a member of the body participates in the discussion or transaction of public or governmental business through telephonic, video, electronic or other means of communication only if the following requirements are met.

A. The body has adopted a policy that authorizes a member of the body who is not physically present to participate in a public proceeding through telephonic, video, electronic or other means of communication in accordance with this section.

B. Notice of the public proceeding has been given in accordance with section 406.

C. A quorum of the body is assembled physically at the location identified in the notice required by section 406.

D. The physical attendance by each member who is participating from another location is not reasonably practical. The reason that each member's physical attendance is not reasonably practical must be stated in the record of the public proceeding.

E. Each member of the body participating in the public proceeding is able to simultaneously hear each other and speak to each other during the public proceeding. Members of the public attending the public proceeding in the location identified in the notice required by section 406 are able to hear all members participating from other locations.

F. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication identifies the persons present in the location from which the member is participating.

4-2

G. All votes taken during the public proceeding are taken by roll call vote.

H. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication has received prior to the public proceeding any documents or other materials that will be discussed at the public proceeding, with substantially the same content as those documents actually presented. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available.

I. The public proceeding is not a public hearing.

2. Voting. A member of a body who is not physically present and who is participating in the public proceeding through telephonic, video, electronic or other means of communication may not vote:

A. On any issue for which materials providing additional information that may influence the member's decision are presented at the public proceeding but have not been provided to the member by the time of the vote; or

B. On any issue concerning testimony or other evidence provided during the public proceeding if it is a judicial or quasi-judicial proceeding.

3. Exception to quorum requirement. A body may convene a public proceeding by telephonic, video, electronic or other means of communication without a quorum assembled physically at one location if:

A. An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742;

B. The public proceeding is necessary to take action to address the emergency; and

C. The body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency.

4. Annual meeting. If a body conducts one or more public proceedings pursuant to this section, it shall also hold at least one public proceeding annually during which members of the body in attendance are physically assembled at one location and where no members of the body participate by telephonic, video, electronic or other means of communication from a different location.

Seek input of agencies before making legislative changes to statutory procedures below.

PART B

Finance Authority of Maine

Sec. B-1. 10 MRSA §971 is amended to read:

§971. Actions of the members

Seven members of the authority constitute a quorum of the members. The affirmative vote of the greater of 5 members, present and voting, or a majority of those members present and voting is necessary for any action taken by the members. No vacancy in the membership of the authority may impair the right of the quorum to exercise all powers and perform all duties of the members.

Notwithstanding any other provision of law, in a situation determined by the chief executive officer to be an emergency requiring action of the members on not more than 3 days' oral notice, an emergency meeting of the members may be conducted by telephone in accordance with Title 1, section 403-A and the following.

1. Placement of call. A conference call to the members must be placed by ordinary commercial means at an appointed time.

2. Record of call. The authority shall arrange for recordation of the conference call when appropriate and prepare minutes of the emergency meeting.

3. Notice of emergency meeting. Public notice of the emergency meeting must be given in accordance with Title 1, section 406 and that public notice must include the time of the meeting and the location of a telephone with a speakerphone attachment that enables all persons participating in the telephone meeting to be heard and understood and that is available for members of the public to hear the business conducted at the telephone meeting.

Ethics Commission *(any changes?)*

Sec. B-2. 21-A MRSA §1002 is amended to read:

§1002. Meetings of commission

1. Meeting schedule. The commission shall meet in Augusta for the purposes of this chapter at least once per month in any year in which primary and general elections are held and every 2 weeks in the 60 days preceding an election. In the 28 days preceding an

election, the commission shall meet in Augusta within one calendar day of the filing of any complaint or question with the commission. Agenda items in the 28 days preceding an election must be decided within 24 hours of the filing unless all parties involved agree otherwise.

2. Telephone meetings. The commission may hold meetings over the telephone if necessary, as long as the commission provides notice to all affected parties in accordance with the rules of the commission and the commission's office remains open for attendance by complainants, witnesses, the press and other members of the public. Notwithstanding Title 1, chapter 13, telephone meetings of the commission are permitted:

A. During the 28 days prior to an election when the commission is required to meet within 24 hours of the filing of any complaint or question with the commission; or

B. To address procedural or logistical issues before a monthly meeting, such as the scheduling of meetings, deadlines for parties' submission of written materials, setting of meeting agenda, requests to postpone or reschedule agenda items, issuing subpoenas for documents or witnesses and recusal of commission members.

3. Other meetings. The commission shall meet at other times on the call of the Secretary of State, the President of the Senate, the Speaker of the House or the chair or a majority of the members of the commission, as long as all members are notified of the time, place and purpose of the meeting at least 24 hours in advance.

4. Office hours before election. The commission office must be open with adequate staff resources available to respond to inquiries and receive complaints from 8 a.m. until at least 5:30 p.m. on the Saturday, Sunday and Monday immediately preceding an election and from 8 a.m. until at least 8 p.m. on election day.

Emergency Medical Services Board

Sec. B-3. 32 MRSA §88, sub-§1, ¶D is amended to read:

§88. Emergency Medical Services' Board

The Emergency Medical Services' Board, as established by Title 5, section 12004-A, subsection 15, is responsible for the emergency medical services program.

1. Composition; rules; meetings. The board's composition, conduct and compensation are as follows.

A. The board has one member representing each region and 11 persons in addition. Of the additional persons, one is an emergency physician, one a representative of emergency medical dispatch providers, 2 representatives of the public, one a representative of for-profit ambulance services, one an emergency professional nurse, one a representative of nontransporting emergency medical services, one a representative of hospitals, one a representative of a statewide association of fire chiefs, one a municipal emergency medical services provider and one a representative of not-for-profit ambulance services. The members that represent for-profit ambulance services, nontransporting emergency medical services and not-for-profit ambulance services must be licensed emergency medical services persons. One of the nonpublic members must be a volunteer emergency medical services provider. Appointments are for 3-year terms. Members are appointed by the Governor. The state medical director is an ex officio nonvoting member of the board.

B. The board shall elect its own chair to serve for a 2-year term. The board may adopt internal rules that may include, but are not limited to, termination of board membership as a consequence of irregular attendance. If a board member does not serve a full term of appointment, the Governor shall appoint a successor to fill the vacancy for the remainder of the term. Any board member may be removed by the Governor for cause. The board may have a common seal. The board may establish subcommittees as it determines appropriate.

C. The board shall meet at least quarterly, and at the call of its chair or at the request of 7 members. When the board meets, members are entitled to compensation according to the provisions of Title 5, chapter 379.

D. A majority of the members appointed and currently serving constitutes a quorum for all purposes and no decision of the board may be made without a quorum present. A majority vote of those present and voting is required for board action, except that for purposes of either granting a waiver of any of its rules or deciding to pursue the suspension or revocation of a license, the board may take action only if the proposed waiver, suspension or revocation receives a favorable vote from at least 2/3 of the members present and voting and from no less than a majority of the appointed and currently serving members. The board may use video conferencing and other technologies in compliance with Title 1, chapter 13, subchapter 1, to conduct its business ~~but is not exempt from Title 1, chapter 13, subchapter 1~~. Members of the board, its subcommittees or its staff may participate in a meeting of the board, subcommittees or staff via video conferencing, conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection constitutes presence in person at such meeting.

Workers' Compensation Board

Sec. B-4. 39-A MRSA §151, sub-§5 is amended to read:

5. Voting requirements; meetings. The board may take action only by majority vote of its membership. The board may hold sessions at its central office or at any other place within the State and shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology in compliance with Title 1, chapter 13, subchapter 1. Regular meetings may be called by the executive director or by any 4 members of the board, and all members must be given at least 7 days' notice of the time, place and agenda of the meeting. A quorum of the board is 4 members, but a smaller number may adjourn until a quorum is present. Emergency meetings may be called by the executive director when it is necessary to take action before a regular meeting can be scheduled. The executive director shall make all reasonable efforts to notify all members as promptly as possible of the time and place of any emergency meeting and the specific purpose or purposes for which the meeting is called. For an emergency meeting, the 4 members constituting a quorum must include at least one board member representing management and at least one board member representing labor.

G:\STUDIES 2011\Right to Know Advisory Committee\meetings by tech draft FINAL per RTKAC 09-23-10 mtg.doc (12/7/2011 10:38:00 AM)

Sec. X. XX MRSA §XXX-X, as amended by PL XXXX, c. XXX, §XX and affected by §XX, is repealed.

Sec. X. XX MRSA §XXX-X is enacted to read:

§ XXX-X. Freedom of access; confidentiality of records

The records of the *[board, agency, authority, etc.]* are public records, except as specifically provided in this section.

1. Confidential records. The following records are designated as confidential:

A. Records containing any information acquired by the *[board, agency, authority, etc.]* or a member, officer, employee or agent of the *[board, agency, authority, etc.]* from an applicant for or recipient of financial assistance provided pursuant to a program administered or established by the *[board, agency, authority, etc.]* is confidential for purposes of Title 1, section 402, subsection 3, paragraph A if the applicant or recipient is an individual.

B. A record obtained or developed by the *[board, agency, authority, etc.]* that:

(1) A person, including the *[board, agency, authority, etc.]*, to whom the record belongs or pertains has requested be designated confidential; and

(2) The *[board, agency, authority, etc.]* has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the record, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment to any person to whom the record belongs or pertains.

C. A financial statement or tax return.

D. A record that contains an assessment by a person who is not employed by the *[board, agency, authority, etc.]* of the credit worthiness or financial condition of any person or project.

E. A record obtained or developed by the *[board, agency, authority, etc.]* prior to receipt of a written application or proposal if the application or proposal is for financial assistance to be provided by or with the assistance of the *[board, agency, authority, etc.]*, or in connection with a transfer of property to or from the *[board, agency, authority, etc.]*. After receipt by the *[board, agency, authority, etc.]* of the application or proposal, a record pertaining to the application or proposal is

not to be considered confidential unless it meets the requirements of the other paragraphs of the subsection.

The *[board, agency, authority, etc.]* shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or record, including information designated confidential under this subsection, specified in the written request. The information or record may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by the committee and may not be released for any other purpose.

2. Exceptions. Notwithstanding subsection 1, the following are public records and are not confidential:

A. Any otherwise confidential information the confidentiality of which the *[board, agency, authority, etc.]* determines to have been satisfactorily and effectively waived;

B. Any otherwise confidential information that has already lawfully been made available to the public; and

C. Impersonal, statistical or general information.

3. Disclosure prohibited; further exceptions. A person may not knowingly divulge or disclose records designated confidential by this section, **except that the *[board, agency, authority, etc.]*, in its discretion and in conformity with legislative freedom of access criteria** in Title 1, chapter 13, subchapter 1A, may make or authorize any disclosure of information of the following types or under the following circumstances:

A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person;

B. Information requested by a financing institution or credit reporting service;

C. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance;

D. If necessary to ensure collection of any obligation in which the *[board, agency, authority, etc.]* has or may have an interest;

E. In any litigation or proceeding in which the *[board, agency, authority, etc.]* has appeared, introduction for the record of any information obtained from records designated confidential by this section;

F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as the order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as the order appears on its face or otherwise to have been issued or made upon lawful authority; and

G. If necessary in connection with acquiring, maintaining, or disposing of property.

(1)

RECEIVED
APR 12 2011

APRIL 12, 2011

Margaret Reinsch
Senior Legal Analyst
Judiciary Committee
Right to Know Advisory
Committee

The Maine Public Broadcasting Network is Maine's largest statewide news and public affairs organization with administrative offices and production facilities for radio and television in Lewiston, Bangor, Augusta and Portland. The station's transmitters and translators are located throughout the state delivering programs to nearly all of Maine citizens. The organization employs 119 staff members. According to the organization's IRS 990 Form ending 6/30/10, MPBN net assets were $15,473,227. According to MPBN's own audit ending June 30, 2010 it received government support of $1,954,235 from the State of Maine, $1,574,366 from the Corporation for Public Broadcasting and government grants of $33,016.

MPBN comes under the FOA Act as "the board of directors of a non-profit, non-stock private corporation that provides statewide noncommercial public broadcasting services and any

4-4

of its committees and subcommittees" and as such under FOA's public proceedings "means the transaction of any functions affecting any and all citizens of the state."

Cove Writers, Inc. and Hometown News Service are news companies producing columns for Maine and other state's newspapers. Hometown News Service is the longest serving continuous member of the State House Newspersons, the press corps with offices in the Cross Building. Both news organizations have as its president and chief journalist, Allen D. (Mike) Brown.

On December 15, 2010, Cove Writers, Inc. filed a FOA request to MPBN President James Dowe for certain financial information. **(See Copy Enclosed)**. A FOA request is mandated by a reply within five working days. No reply came within that period or in subsequent weeks although several attempts to reach President Dowe were futile until February 2011with a phone call from John F. Isacke, Vice President and Chief Financial Officer which was 45 days from the original request and 40 days in violation of the FOA Act. I requested of Mr. Isacke to put his response in writing which he did with letter dated 2/311. **(See Copy Enclosed).** Although certain MPBN financials were forwarded, two items (1) a copy of MPBN's current roster of full-time employees with their job titles and ranges for pay grades, and (2) a current copy listing part-time and/or contract employees who received IRS Form 1099 including the amounts they received were omitted.

According to Mr. Isacke the two omitted items do not apply under the FOA Act.

On March 25, 2011, Cove Writers, Inc. filed a FOA to P. James Dowe, President, MPBN, requesting a copy of MPBN's IRS Form 1099-Misc. listing persons and/or companies or other individuals /entities including the amounts received. There was no response after five days. In fact, there was no response at all.

After searching the relevant history files of the FOA Act and the Right to Know Advisory Committee which was created by Public Law 2005, chapter 631, and which has the oversight and responsibility of recommending changes to the Judiciary Committee, I can find no exception that any of the requests in the original letter of December 15, 2010 to Mr. Dowe are confidential and therefore exempt as stated by Mr. Isacke.

However, if Mr. Isacke's presumption is correct, then there is a gross conflict in that although MPBN comes under FOA's "Proceedings" as Mr. Isacke admits, it does not under "Public Records." Therefore, it challenges the general purpose of the Maine FOA as "transactions of any functions affecting any and all citizens of the state" and specifically and effectively labeling all MPBN public records as confidential. Mr. Isacke did respond to requests for some information under "Public Records "but chose to withhold other information under "Public Records" therefore "picking and choosing" what public records to reveal to the public.

MPBN is Maine's only "non-profit corporation that provides statewide noncommercial public broadcasting services" and therefore specifically under Maine's Freedom of Access Act.

The Right to Know Advisory Committee should review MPBN"s proprietary stance on Public Records in view of its tremendous media influence in Maine and as the recipient of nearly two million annually of taxpayer funds. If Mr. Isacke is correct then MPBN is under Maine's FOA Act in name only and escapes public access to all of its public records or whatever it chooses to reveal.

On February 17, 2011 a column bylined by Mike Brown was printed in the Ellsworth American (**See Copy enclosed**) revealing financials of MPBN ending June 2009 with the questions of MPBN's cavalier illegal time responses and why if the State of Maine taxpayers were contributing nearly $2 million to a non-profit, private news corporation then why it did not come fully under the FOA Act?

Efforts are current and continuing to obtain full compliance from MPBN but so far it refuses to release requested information under Maine's Freedom of Information law claiming confidentially of personnel records.

Enclosures:

Allen D. (Mike) Brown, President

Hometown News Service

State House Station 162

Augusta, ME 04333

Phone 287-4899

E-mail brown@midcoast.com

COVE WRITERS, INC.
INDEPENDENT SYNDICATION
78 CLIFF ROAD, SATURDAY COVE
NORTHPORT, MAINE 04849

TELEPHONE (207) 338-3419
FAX (207) 338-4992

December 15, 2010

Jim Dowe, President
Maine Public Broadcasting Network
1450 Lisbon Street
Lewiston, Maine

Dear Mr. Dowe:

Pursuant to Title 1, MRSA, Chap. 13, Maine's Freedom of Access Law, I am requesting the following information:

1.) The most recent audited financial statement of MPBC.
2.) A copy of MBPC's latest filed IRS 990 form.
3.) A copy of MPBC's current roster of full-time employees with their job titles and ranges for pay grades.
4.) A current copy listing MPBC's part-time and/or contract employees who received IRS Form 1099 including the amounts they received.
5.) The names of current MPBC Board of Trustees and their terms of office.

Than you Mr. Dowe for your past cooperation and prompt reply to the above requests. Also if you have any comment on content and activity of your organization please include it your reply.

Sincerely,

Allen D. (Mike) Brown, President
Cove Writers, Inc.
Hometown News Service

Maine Public Broadcasting Network

1450 Lisbon Street, Lewiston, Maine 04240-3595 · 800-884-1717 · 207-783-9101 · Fax 207-783-5193

February 3, 2011

Allen D. Brown
Cove Writers, Inc.
78 Cliff Road, Saturday Cove
Northport, Maine 04849

Re: Your request of December 15, 2010

Dear Mr. Brown,

It was nice speaking with you on the phone yesterday. As I stated during our conversation, I do not believe that the items you have requested are all subject to Title 1, MRSA, Chapter 13 – Maine's Freedom of Access law. My beliefs in that regard are as follows:

- As I told you, I am not a lawyer, but my simple reading of Chapter 13 is that it pertains to Public Proceedings and to Public Records.
  - With respect to Public Proceedings, the work of MPBN's Board of Directors, its committees and subcommittees are specifically included in §402 2. E. MPBN maintains a public file of all such meetings and those files are available for review, upon request, in our Lewiston office as provided under the Freedom of Access law.
  - As it pertains to Public Records, it is my belief that MPBN is neither an agency of the state nor are its employees public officials. As such, it is my belief that the Public Records provisions of Chapter 13 do not apply to MPBN.

Within that context, my response to each of your questions follows:

1. Enclosed, for your convenience, is a copy of MPBN's audited financial statements for the years ended June 30, 2010 and 2009. This document is made available to the public on our website, www.mpbn.net .
2. Enclosed, for your convenience, is a copy of MPBN's draft Form 990 for the year ended June 30, 2010. I will let you know if any substantive changes are made prior to its filing which is due February 15, 2011. This document is also made available to the public through both the IRS website and on MPBN's website, www.mpbn.net .
3. The roster of full-time employees, their job titles and salary ranges is not a document we normally share and is not enclosed. However, the Form 990

referred to above discloses for all employees who are compensated at $100,000 or higher, their name, title and total compensation.

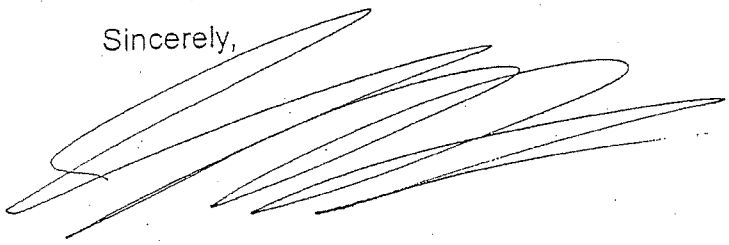
4. The listing of part-time and/or contract employees who received an IRS Form 1099 and the amounts they received is not a document we normally share and is not enclosed.
5. A listing of our Board of Trustees is also made available to the public on our website, www.mpbn.net . A listing, including their terms of office is enclosed for your convenience.

I again apologize for the tardiness of my reply to your request.

If there is anything else I can do for you, do not hesitate to contact me directly. I have enclosed one of my business cards. It contains my direct contact information.

When and if an article results from this information response, I would appreciate receiving a copy. Thank you.

Sincerely,



John F. Isacke
Vice President and Chief Financial Officer

Cc: Alan L. Baker, Publisher, The Ellsworth American (w/o Enc)
P. James Dowe, President, Maine Public Broadcasting Network (w/o Enc)

Ellsworth American/State of Maine Column/Mike Brown/Issue 2/17/11

MPBN's Violation of the Maine FOA Act

The Maine Freedom of Access Act lies at the heart of a democratic government. It grants the people of this state a broad right of access to public records with transparency, a fundamental principle of the Act. Within its many statute definitions is the right to a filer's response within five days.

On December 15, 2010 filer Hometown News Service requested of James Dowe, president of Maine Public Broadcasting Network, certain financial records of MPBN under the Freedom of Access Act. The response date was overdue on January 7, 2011 and the filer contacted the MPBN office and was informed that the request had been forwarded to the financial department. On January 17, there was still no response. As the filer contemplated court action under the Act there was a phone response on 2/3/11/ from John F. Isacke, MPBN vice president and chief financial officer, which was 45days from the original response and some forty days in violation of the Freedom of Access Act.

MPBN comes under the Act's public proceedings definitions as "the board of directors of a non-profit, non-stock, private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees."

Although VP Isacke provided hard copy duplicates of certain financials–IRS 990 for 2099 and Audited Report, 2010 - he wrote in a cover letter that,"I do not believe that all the items requested are subject to the FOA Act." He further stated,"I am not a lawyer, but my simple reading of Chapter 13 as it pertains to Public Records is that neither is MPBN an agency of the state nor are its employees public officials."

What VP Isacke was referring to in the filers request was (1) a copy of MPBN's full-time employees with their job titles and ranges for pay grade and (2) a listing of contract employees who received IRS Form 1099 and the amounts they received. These two items have been in the filer's request to MPBN for nearly a decade and fully furnished even with specific names and specific salary although only a salary range was requested.

MPBN is one of the largest media corporations in Maine employing 119 employees and therefore has considerable impact on information, ideas and news content in programs provided to nearly all of Maine citizens through transmitters throughout the state.

MPBN is a $15.5 million tax-exempt corporation according to its 2009 IRS report. A substantial revenue stream is public support, that is, taxpayer funds. In its 2010 revenue, the State of Maine, via taxpayers, contributed $1,954,235 and the Corporation for Public Broadcasting, via taxpayers, $1,574,366, other government grants of $33,016, via taxpayers, for a total of $3,561,617. The MPBN membership revenue was $3,566,370 or only $4,753 more than public taxpayer support.

According to its 2010 audit, the reported 118 anonymous (so stated VP Isacke) employees received $5,001,699 in salaries and benefits. The only employee identified in the IRS 990 Form was President James Dowe with a salary of $156,325 plus $7,328 in retirement and other deferred compensation.

Phone conversations with VP Isacke indicated that the reason for the "delay" of response - he did not admit to violation of the Act - was that he was "too busy." Also, he objected to sending hard copy data when the internet was available. However, in its self-praising organization overview on its IRS 2009 Form it states precisely, "Any member of the general public can also request either verbally or in writing that these documents be sent to them."

As to VP Isacke's "simple reading" of the FOA Act that MPBN is not subject to Public Proceedings and Public Records under the Act in regard to employee salaries and pay ranges - that private opinion appears to be in conflict with the term "public proceedings meaning the transactions of any function affecting any and all citizens of the state." The fact that Maine citizens contributed $1,954,235 to support MPBN salaries and benefits in 2010 should be considered a function.

Apparently there has been some shading in the transparency of MBPN since the open and full cooperation of MPBN President Jim Dowe through the years. The fact that MPBN was 45 days late and in violation of the FOA Act should be of considerable concern of all citizens and

especially the state legislature which appropriates millions in support of MPBN programming when the state itself has financial concerns of providing its citizens with basic needs of subsistence livability with the challenge of declining revenues.

Nothing so darkens the transparency of government and its ancillary providers of public information than the shadows of silence.

-30-

MacImage of Maine, LLC, et al. v. Androscoggin County, et al., 2012 ME 44
Decided March 27, 2012

Parties:

MacImage of Maine, LLC
John Simpson

Androscoggin County
Aroostook County
Cumberland County
Knox County
Penobscot County
York County

Filing Amicus briefs

Franklin County and Sagadahoc County
American Civil Liberties Union Foundation of Maine
Maine Freedom of Information Coalition

MacImage of Maine, LLC and its principal, John Simpson, asked six Maine counties to provide, in a specified digital format, copies of every document contained in the counties' registries of deeds, including the indices to the recorded documents. All documents are available for reviewing in the registries and online and are available for individual copying. MacImage seeks a bulk digital delivery of all documents and indices in order to create a private database with a proprietary search engine through which it would offer what it describes as improved, consolidated search and retrieval services to the public for a profit. The counties are willing to provide the documents and indices, but the fees that the counties may charge for the requested electronic information are in dispute.

Conclusions:

1. The real estate records held by the county registries of deeds, along with the indices, are available to the public pursuant to Title 33 §651.
2. Reasonable fees for responding to the bulk requests for records and indices, including the transfer of electronic data, have been established by the Legislature through recent legislation (PL 2011, c. 378).
3. PL 2011, c. 378 is applicable to the dispute before the Law Court.
4. The responses of all but two of the counties that are parties, agreeing to provide the requested records in bulk and setting the costs for transferring the data, fall within the applicable law's parameters for reasonable fees.

Judgment:

Superior Court judgment vacated, remanded for entry of judgment for Androscoggin, Cumberland, Knox and York Counties (fees are reasonable), and remanded for further proceedings for Aroostook and Penobscot Counties (to provide for digital indices).

FOAA issues:

- The law Court found that the specific legislation regarding the registries found in Title 33 – not the more general language of FOAA – controls the resolution of the dispute regarding the reasonableness of the fees charged by the counties. The Law Court did not discuss the FOAA further. (pages 13-14)

- The Court mentioned in a footnote that other states have begun adopting legislation addressing efforts by private entities to obtain digital records in bulk and for commercial use. It notes that the RTK AC has begun to consider such issues and references the 2012 Annual report. (footnote page 14)

MAINE SUPREME JUDICIAL COURT
Decision: 2012 ME 44
Docket: Cum-11-127
Argued: December 13, 2011
Decided: March 27, 2012

Reporter of Decisions

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD, GORMAN, and JABAR, JJ.

MacIMAGE OF MAINE, LLC, et al.

v.

ANDROSCOGGIN COUNTY et al.

SAUFLEY, C.J.

[¶1] In this appeal, we are presented with a question of first impression regarding the bulk copying of county registry documents. Specifically, MacImage of Maine, LLC, and its principal, John P. Simpson, have asked the six Maine counties involved in this appeal to provide to them, in a specified digital format, copies of every document contained in the counties' registries of deeds, including the indexes to the recorded documents. The recorded documents are already available to MacImage and the public for viewing in the registries and online, and they are available for individual copying. MacImage, however, seeks a bulk, digital delivery of all such documents and all indexes in order to create a private database with a proprietary search engine through which it would offer what it describes as improved, consolidated search and retrieval services to the public for a

profit. The counties have agreed to provide electronic copies of the registries' recorded documents, but disputes over the fees that the counties may charge for the requested electronic information precipitated this litigation and the appeals by the counties and the cross-appeals by MacImage and Simpson. We have consolidated all pending appeals.

[¶2] The counties argue that the Superior Court (Cumberland County, *Warren J.*) erred in determining that they may not charge the fees that they proposed in their responses to the MacImage and Simpson requests. We reach the following conclusions: the real estate records held by county registries of deeds, along with the indexes to those records, are available to the public pursuant to 33 M.R.S. § 651 (2011);[1] reasonable fees for responding to bulk requests for records and indexes,[2] including the transfer of electronic data, have been established by the Legislature through recent legislation, *see* P.L. 2011, ch. 378 (effective June 16, 2011); that legislation is applicable to the dispute before us; and the responses of all but two of the six counties before us, agreeing to provide the requested records in bulk and setting the costs for transferring the data, fall within the applicable law's parameters for reasonable fees. Accordingly, we vacate the

---

[1] The records were equally available to the public pursuant to the statute as it existed at the time of the MacImage and Simpson requests. *See* 33 M.R.S. § 651 (2009).

[2] Although the fee provisions of title 33 discuss copies and abstracts of "records," without specific reference to indexes, we read those provisions to apply equally to requests for copies of index pages.

judgment of the Superior Court, which entered its judgment before the most recent legislation was passed, and we remand for entry of judgment in favor of Androscoggin, Cumberland, Knox, and York Counties and for further proceedings regarding Aroostook and Penobscot Counties.[3]

I. BACKGROUND

A. Electronic Records in the Registries of Deeds

[¶3] As state and local governments have become more sophisticated in their electronic recordkeeping, the ease of effectuating electronic transfers has led to requests for the bulk delivery of complete compilations of various types of government records. Bulk requests were rarely received in a purely paper-based system, given the labor and costs required to reproduce large quantities of paper documents.

[¶4] In response to the technological advances that have enabled a more efficient flow of public information, and the resulting increased interest in obtaining that electronic information at low cost for private commercial use, some states have preemptively legislated the conditions for allowing bulk access. For example, in New Mexico, a copy of a database will be provided if the recipient agrees, among other things, "not to use the database for any . . . commercial

[3] Both the appellants and the appellees have raised procedural challenges, primarily related to the timeliness of particular filings. *See generally* 1 M.R.S. § 409(1) (2011); 5 M.R.S. § 11002(3) (2011). We are unpersuaded, and we do not discuss those challenges further.

purpose unless the purpose and use is approved in writing by the state agency that created the database." N.M. Stat. Ann. § 14-3-15.1(C)(2) (LexisNexis 2012). In Michigan, the Legislature acted more broadly to confer on registers of deeds the discretion to satisfy information requests "using a medium selected by the register of deeds." Mich. Comp. Laws Serv. § 565.551(2)(a) (LexisNexis 2011). About fifteen to forty percent of counties in the United States require users of bulk online records to enter into a contract agreeing not to use the records for commercial purposes. U.S. Gov't Accountability Office, GAO-08-1009R, *Social Security Numbers in Bulk and Online Records* 22 (2008).

[¶5] In Maine, it appears that the Legislature was made aware of the policy considerations related to registry records, *see* 33 M.R.S. § 651, only after MacImage made its requests and alerted county and state government to the potential for disputes over the availability of the electronic documents in bulk and the fees that could be charged for bulk transfers.[4] Accordingly, when MacImage made its requests for digital copies of every document contained in each county's registry, the statutes addressing fees for copies of registry records were still written in terms that were designed for a paper-based county registry system. That registry system, which calls for the recording and indexing of land-transfer records in each

[4] In contrast, Maine's Freedom of Access Act (FOAA) has, since it was enacted in its present form, defined "public records" to include an "electronic data compilation." P.L. 1975, ch. 758 (effective July 29, 1976) (codified at 1 M.R.S. § 402(3) (2011)).

county, has existed in Maine since 1821. *See* P.L. 1821, ch. 36 (effective Feb. 20, 1821); P.L. 1821, ch. 98 (effective Mar. 19, 1821). Pursuant to long-existing statutes, Maine's counties provide the public service of recording private and public land transactions and making the information publicly available for a reasonable fee. *See* P.L. 1821, ch. 98, § 3; *see also* 33 M.R.S. § 751(14) (2009); 33 M.R.S. § 751(14-B), (14-C) (2011).

[¶6] The purpose of Maine's registries of deeds, as in other states, is to provide a common base of information regarding the ownership and configuration of real estate in Maine. *See* 33 M.R.S. § 651 (2011) (requiring the registers of deeds to record and index instruments conveying real property interests). All of the documents recorded within the counties' registries are, by statute, always available to the public for reasonable fees, and the parties do not dispute the public availability of the registry records in this case. Rather, as the following procedural history demonstrates, the issue before us relates to the reasonableness of the fees charged by the county registries for providing bulk transfers of electronic copies.

B. Procedural History

[¶7] The following facts are not in dispute. In September 2009, MacImage sent requests to several Maine counties seeking "[a]ccess to inspect and copy all land records available on the Registry [of Deeds] website" and "[c]opies of all the electronic data files used by the Registry's document recording system and the

Registry's website." At the time, the county commissioners were authorized by statute to determine "a reasonable fee" to charge for making copies and abstracts from the registries' records. 33 M.R.S. § 751(14) (2009). The statute did not expressly address bulk information requests or the electronic indexes. *See id.* MacImage requested both the electronic document images of the registries' land records and the grantor-grantee indexes. Simpson also personally requested electronic copies of the counties' land records and indexes.

[¶8] At the time that the counties responded to MacImage's and Simpson's requests, the relevant statute governing the copying of records at the county registries provided in full:

> Except as provided in any other provision of law, registers of deeds shall receive the following fees for:
>
> . . . .
>
> **14. Abstracts and copies.** Making abstracts and copies from the records, a reasonable fee as determined by the county commissioners.

33 M.R.S. § 751 (2009).

[¶9] It appears that the counties had not previously been asked to provide such bulk data from their relatively recently digitalized document systems. Each county ultimately agreed to provide the requested land records in an electronic format, though two of the counties—Aroostook and Penobscot—failed to offer

electronic copies of the index pages for a fee. The fees identified in several of the counties' responses included costs for the specific formatting of the documents in the format requested by MacImage, including payment to the database contractors who administered the counties' digital systems for technological support in handling the requests.[5]

[¶10] All of the counties at issue offered to make electronic copies of the land records available to the public for specified fees:

- Androscoggin County offered to provide the copies at a rate of $0.12 per image, plus $3,600 for recorded documents and $15,000 for indexes to cover costs owed to its database contractor. It also offered access to the digital information through its website for $350 per year with no charge for downloads.
- Aroostook County offered to provide electronic copies of land records through its website for $200 per year for a subscription plus a $0.50-per-page download charge that is reduced to $0.05 per page for users who download 1,000 pages or more per month in a calendar year. Aroostook County did not offer to transfer copies of its indexes.

[5] Simpson had himself become familiar with the county registries when he provided contract computer services to Hancock County to create their digitalized system.

- Cumberland County offered to provide a bulk download at a rate of $0.02 per document for indexes and $0.025 per image for land records.
- Knox County offered to provide the information in several ways, including by bulk download at a rate of $0.02 per document for the index and $0.025 per image for the land records.
- Penobscot County offered to provide electronic copies through its website for a subscription fee of $35 per month with a $1-per-page charge for downloads. Penobscot County did not offer to provide electronic copies of its index pages, and it did not offer a bulk download rate.
- York County offered a bulk download rate of $0.024 per image.

[¶11] Unsatisfied with the counties' requested fees, in November 2009, MacImage filed a complaint in the Superior Court pursuant to the Maine Freedom of Access Act (FOAA), 1 M.R.S. § 409(1) (2011), and M.R. Civ. P. 80B, in which it alleged a constructive denial of access to the public records by the counties.[6] MacImage sought declaratory and injunctive relief. It also sought to recover costs and attorney fees.

[6] The complaint was filed against several counties in addition to the six at issue here, but the claims against those other counties were dismissed before trial.

[¶12] The parties proceeded to a five-day trial from October 4 through 8, 2010, and the court entered a judgment on February 22, 2011, in which it concluded that each of the counties had denied access, including by charging unreasonable fees for providing the information identified in the requests from MacImage and Simpson.[7] The court concluded that certain legislation enacted after the requests were denied, *see* P.L. 2009, ch. 575 (effective July 12, 2010) (codified at 33 M.R.S. §§ 651, 751(14) (2010)), did not apply retroactively. It rejected the counties' fee schedules for including costs beyond those associated with making an electronic transfer of information onto storage media. The court articulated its own version of specific fees that it found would be reasonable for each county to charge to transfer the information to MacImage electronically. The court also provided some guidance regarding future requests under the then new statute, which provided, effective July 12, 2010, that specific expenses could be considered in determining a reasonable fee:

> Except as provided in any other provision of law, registers of deeds shall receive the following fees for:
>
> . . . .

[7] Because we vacate that determination, we do not discuss further the Superior Court's conclusion that the counties may not include in their fees any of the costs of gathering the documents, creating the counties' digital systems, and other costs of doing business. The court's determination that fees may be based only on the limited costs of copying the documents has been superseded by legislative action. *See* P.L. 2011, ch. 378 (effective June 16, 2011).

> **14. Abstracts and copies.** Making abstracts and copies from the records, a reasonable fee as determined by the county commissioners for each category of abstracts and copies, such as paper copies, attested copies, copies obtained online and bulk transfers of copies. In setting a reasonable fee for each category of abstracts and copies, the commissioners shall consider factors relating to the cost of producing and making copies available, which may include, but are not limited to: the cost of depleted supplies; records storage media costs; actual mailing and alternative delivery costs or other transmitting costs; amortized infrastructure costs; any direct equipment operating and maintenance costs; costs associated with media processing time; personnel costs, including actual costs paid to private contractors for copying services; contract and contractor costs for database maintenance and for online provision and bulk transfer of copies in a manner that protects the security and integrity of registry documents; and a reasonable rate for the time a computer server is dedicated to fulfilling the request.

33 M.R.S. § 751 (2010).

[¶13] Each of the six remaining county defendants timely appealed, and MacImage and Simpson jointly cross-appealed.[8]

[¶14] After the counties commenced their appeals, the Legislature enacted Public Law 2011, chapter 378, which repealed section 751(14), replaced that subsection with new statutory language, and provided a retroactive explanation of what qualified as a reasonable fee between September 1, 2009, and the effective date of the Act:

---

[8] MacImage and Simpson did not separately argue their grounds for appealing from the judgment in their brief, and we do not address the cross-appeals further. *See* M.R. App. P. 9(d).

An Act Concerning Fees for Users of County Registries of Deeds

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the registry of deeds offices provide a valuable public service in recording and maintaining the land records of the State; and

Whereas, current law allows the county commissioners to set fees for copying at only the cost of providing the copies; and

Whereas, the cost to the counties to maintain the information and to make it accessible cannot be adequately reimbursed by fees defined by copying cost; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 33 MRSA §751, sub-§14, as amended by PL 2009, c. 575, §2, is repealed.

Sec. 2. 33 MRSA §751, sub-§§14-B and 14-C are enacted to read:

14-B. Abstracts and copies. Making abstracts and copies of records at the office of the register of deeds as follows:

A. Five dollars per page for paper abstracts and copies of plans;

B. One dollar per page for other paper abstracts and copies; and

C. Fifty cents per page for digital abstracts and copies, except that the fee is 5¢ per page for copies of 1,000 or more digital abstracts and copies of consecutive records.

This subsection is repealed July 31, 2012;

14-C. Abstracts and copies. Beginning August 1, 2012, making abstracts and copies from the records, a reasonable fee as determined by the county commissioners for each category of abstracts and copies, such as paper copies, attested copies, copies obtained online and bulk transfers of copies. In setting a reasonable fee for each category of abstracts and copies, the commissioners shall consider factors relating to the cost of producing and making copies available, which may include, but are not limited to: the cost of depleted supplies; records storage media costs; actual mailing and alternative delivery costs or other transmitting costs; amortized infrastructure costs; any direct equipment operating and maintenance costs; costs associated with media processing time; personnel costs, including actual costs paid to private contractors for copying services; contract and contractor costs for database maintenance and for online provision and bulk transfer of copies in a manner that protects the security and integrity of registry documents; and a reasonable rate for the time a computer server is dedicated to fulfilling the request; and

Sec. 3. Legislative intent; retroactivity. The Legislature finds that the following fees charged by an office of a register of deeds for making abstracts and copies from records, whether in paper or digital form, including for bulk copies or transfers of such copies, between September 1, 2009 and the effective date of this Act are reasonable and in accordance with the legislative intent of Public Law 2009, chapter 575, section 2 and are expressly authorized: a fee of up to $1.50 per page for paper copies and a fee of up to $1.50 per page for digital copies. Nothing in this section may be interpreted as a legislative finding that a higher fee charged by an office of a register of deeds between September 1, 2009 and the effective date of this Act to persons who were not subscribers to the online services of a register of deeds is unreasonable. Notwithstanding the Maine Revised Statutes, Title 1, section 302, this section applies retroactively to September 1, 2009.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

P.L. 2011, ch. 378 (effective June 16, 2011). With this new legislation to consider, we now address the parties' arguments on appeal.

II. DISCUSSION

A. Applicability of the Freedom of Access Laws

[¶15] MacImage argues that its claims fall under Maine's Freedom of Access Act and that all statutory interpretation must be viewed in light of FOAA's broad definition of public records that are open and available for public inspection. *See* 1 M.R.S. §§ 402(3), 408 (2011). We conclude that the applicability of FOAA is not dispositive here.

[¶16] The Legislature has chosen to establish county registries of deeds, to require that all records be made available to the public, and to allow the counties to charge reasonable fees for the services made available through the registries. *See generally* 33 M.R.S. §§ 651-670, 751-752 (2011). Thus, there is no dispute that the records at issue are always open for public inspection and copying, and the counties agree that they have that responsibility.

[¶17] The dispute that brings the parties before us relates only to the fees that may be charged by the counties for the bulk electronic transfer of the records. The specific legislation regarding the registries found in title 33—not the more general language of FOAA—controls the resolution of the dispute regarding the

reasonableness of the fees charged by the counties. The Legislature has recently clarified that FOAA is not intended to govern fees for copying records from the registries of deeds. *See* P.L. 2009, ch. 575, § 1 (effective July 12, 2010) (codified at 33 M.R.S. § 651 (2011) (stating that, notwithstanding FOAA, "this chapter governs fees for copying records maintained under this chapter")); *see also* 1 M.R.S. § 408(1) (2011) (stating that the FOAA provisions regarding the right to inspect and copy public records apply "[e]xcept as otherwise provided by statute").

[¶18] Moreover, the purpose of FOAA is not offended by the independent statute governing the fees that may be charged by the registries of deeds. *See* 1 M.R.S. § 401 (2011) (stating the purpose of FOAA to promote the openness of government activities and the records of those activities).[9] Because we conclude that the more specific statutes governing registry functions govern the determination of the reasonableness of the fees imposed, we do not discuss FOAA further.

[9] Other states have amended their freedom-of-access laws more generally to address private entities' efforts to obtain digital records in bulk and for commercial use. *See, e.g.*, Ky. Rev. Stat. Ann. § 61.874 (LexisNexis 2011) (permitting electronic copying for noncommercial use upon payment for the actual cost of reproduction and permitting public agencies to charge a contracted fee to provide records to be used for a commercial purpose). Maine's Legislature has not yet adopted such standards for general application to FOAA requests, but the Right to Know Advisory Committee has begun to consider such issues and has made some recommendations. *See* Right to Know Advisory Committee, Sixth Annual Report to the 125th Legislature 9-11, 16-17 (Jan. 2012).

B. Applicability of Changes to Title 33 During Litigation

[¶19] When this litigation began, the statute governing fees for copies of recorded deeds provided only that the county commissioners were entitled to establish "a reasonable fee" to be charged for copies. 33 M.R.S. § 751(14) (2009). While the suit was pending, but before trial, the Legislature amended the statute to set forth factors that the county commissioners could consider when determining reasonable fees for paper copies, attested copies, online copies, or copies delivered through bulk transfers. *See* P.L. 2009, ch. 575, § 2 (effective July 12, 2010) (codified at 33 M.R.S. § 751(14) (2010)). The 2010 legislation did not indicate that it was to be applied retroactively. *See id.* The parties proceeded to trial, and the court concluded that the statute in existence at the time that the original requests were made was applicable: 33 M.R.S. § 751(14) (2009).

[¶20] After the Superior Court entered its judgment and the counties appealed from the court's decision, however, the Legislature enacted new legislation. P.L. 2011, ch. 378 (effective June 16, 2011) (codified in part at 33 M.R.S. § 751(14-B), (14-C) (2011)). A portion of that legislation was explicitly enacted to apply "retroactively to September 1, 2009," which encompasses the time within which the MacImage and Simpson requests were submitted. P.L. 2011, ch. 378, § 3. In that section, the Legislature approved the imposition of fees of up to $1.50 per page for digital copies. P.L. 2011, ch. 378, § 3.

[¶21] We review de novo whether a statutory amendment will be applied retroactively or prospectively. *See In re Guardianship of Jeremiah T.*, 2009 ME 74, ¶ 17, 976 A.2d 955. Regarding the particular legislation at issue here, the counties argue that the most recent legislation—particularly P.L. 2011, ch. 378, § 3—retroactively governs the fees chargeable to MacImage and Simpson to satisfy their requests. To determine whether the new statute applies, we will examine (1) whether the Legislature expressed the intent to make the statute retroactive in its application and (2) whether that retroactive application violates any provisions of the Maine Constitution.

1. Retroactivity

[¶22] The Legislature has adopted a rule of construction that "[a]ctions and proceedings pending at the time of the passage, amendment or repeal of an Act or ordinance are not affected thereby." 1 M.R.S. § 302 (2011). The general rule of statutory construction set forth in section 302 may be overcome, however, by "[l]egislation expressly citing section 302, or explicitly stating an intent to apply a provision to pending proceedings." *Bernier v. Data Gen. Corp.*, 2002 ME 2, ¶ 16, 787 A.2d 144; *see Kittery Retail Ventures, LLC v. Town of Kittery*, 2004 ME 65, ¶ 20, 856 A.2d 1183, *cert. denied*, 544 U.S. 906 (2005); *see also Sinclair v. Sinclair*, 654 A.2d 438, 439-40 (Me. 1995) (holding that legislative intent—not a classification of legislation as procedural or substantive—determines the

applicability of new legislation to a *pending* claim); *Riley v. Bath Iron Works Corp.*, 639 A.2d 626, 628-29 (Me. 1994) (distinguishing between the application of section 302 to pending claims and the application of the procedural-substantive distinction in determining "the temporal application of legislation to preexisting, inchoate interests").

[¶23] Thus, the Legislature may appropriately amend a statute and have it take effect immediately, and it may, within the bounds of the Maine Constitution,[10] "make such a change retroactive and thereby undo what it perceives to be the undesirable past consequences of a misinterpretation of its work product." *State v. L.V.I. Group*, 1997 ME 25, ¶ 13, 690 A.2d 960 (quotation marks omitted). A pending proceeding may be affected if the Legislature has expressed an intention that the statute apply retroactively notwithstanding the general rule of construction set forth in section 302. *Bernier*, 2002 ME 2, ¶ 16, 787 A.2d 144.

[¶24] Here, the Legislature determined that, for digital copies of registry records, fees of up to $1.50 per page were reasonable when charged between September 1, 2009, and the effective date of the legislation, June 16, 2011. P.L.

---

[10] Giving statutes retroactive effect may be unconstitutional in a variety of circumstances, including when the legislation would substantially impair a contractual relationship in violation of the Contract Clause, Me. Const. art. I, § 11; *see Windham Land Trust v. Jeffords*, 2009 ME 29, ¶ 16, 967 A.2d 690, or would constitute an ex post facto law in violation of the Ex Post Facto Clause, Me. Const. art. I, § 11; *see, e.g., State v. Letalien*, 2009 ME 130, 985 A.2d 4.

2011, ch. 378, § 3.[11] The Legislature explicitly stated, "Notwithstanding the Maine Revised Statutes, Title 1, section 302, this section applies retroactively to September 1, 2009." *Id.*

[¶25] In the 2011 enactment, the Legislature unequivocally expressed an intent for the statute to apply retroactively, *see Morrill v. Me. Tpk. Auth.*, 2009 ME 116, ¶ 5, 983 A.2d 1065, and the period of retroactivity includes the pending litigation regarding the September 2009 requests submitted by MacImage and Simpson. Thus, unless there is some constitutional impediment to its enforcement, the new legislation requires us to consider this matter based on the standard set forth in P.L. 2011, ch. 378, § 3.

2. Constitutional Challenges

[¶26] If there is a reasonable interpretation of a statute that will satisfy constitutional requirements, we will avoid construing the statute in a way that renders it unconstitutional. *Bagley v. Raymond Sch. Dep't*, 1999 ME 60, ¶ 14, 728 A.2d 127. With this rule of construction in mind, we now consider whether the legislation violates (a) the constitutional separation of powers, (b) the Due Process Clause, (c) the Equal Protection Clause, (d) the Takings Clause, or (e) the Special Legislation Clause.

---

[11] The Superior Court concluded that the counties were limited in setting reasonable fees to the actual costs of preparing the data for transfer and the "copying" or transfer costs. The Legislature rejected this limited approach to fee-setting in both of its enactments that followed the initial request of MacImage. *See* P.L. 2011, ch. 378 (effective June 16, 2011); P.L. 2009, ch. 575 (effective July 12, 2010).

a. Separation of Powers

[¶27] The constitutional separation of powers is not always undermined when the Legislature passes legislation that "affects cases that are pending in the judicial system." *Bernier*, 2002 ME 2, ¶ 17 n.7, 787 A.2d 144; *see* Me. Const. art. III, § 2. Although MacImage and Simpson contend that P.L. 2011, ch. 378, § 3 usurps the judicial function by retroactively interpreting the meaning of a repealed statute, 33 M.R.S. § 751(14) (2009), and attempting to overturn a decision in a private dispute, this argument underestimates the *public interests* at stake.

[¶28] To determine whether conduct violates the constitutional separation of powers in Maine, we ask a narrow question: "[H]as the power in issue been explicitly granted to one branch of state government, and to no other branch?" *State v. Hunter*, 447 A.2d 797, 800 (Me. 1982). The Maine Constitution vests in the Legislature the "full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this State, not repugnant to this Constitution, nor to that of the United States." Me. Const. art. IV, pt. 3, § 1. In exercising this power and authority, the Legislature may properly consider issues regarding the funding of county government services.

[¶29] Although MacImage and Simpson argue that the Legislature's actions constitute an attempt to overturn a decision in a private dispute, the Public Law at issue served more broadly to balance the public and private interests involved in

fee-setting for counties' electronic copying of registry land records and indexes—a technological reality that was not addressed in preexisting legislation. P.L. 2011, ch. 378, Emergency Preamble. The Legislature acted to balance competing interests by legislating the reasonableness of fees that could be charged during the time period when the county registries were acting without legislative guidance, enacting prospective legislation to set specific fees for a limited period of time, and finally requiring the county commissioners to establish fees by taking into account statutory criteria by August 1, 2012. P.L. 2011, ch. 378. The Legislature "establish[ed] . . . reasonable laws and regulations for the defense and benefit of the people of this State," Me. Const. art. IV, pt. 3, § 1, by establishing certain limits on fees in the short term to allow counties time to develop their fee schedules autonomously in compliance with 33 M.R.S. § 751(14-C) (2011) and by requiring the implementation of those fee schedules on August 1, 2012. The Legislature did not, by enacting this policy-based legislation, usurp the adjudicatory power of the courts. *See* Me. Const. art. III, § 2; Me. Const. art. IV, pt. 3, § 1; Me. Const. art. VI, § 1.

b. Due Process

[¶30] "When the State exercises its police power to regulate for the general welfare and a fundamental right is not at issue, statutes are subjected to rational basis review." *State v. Haskell*, 2008 ME 82, ¶ 5, 955 A.2d 737. We defer to the

Legislature in its balancing of competing interests to regulate social and economic issues. *Id.* The party challenging a statute's constitutionality therefore bears the burden of proving a constitutional deficiency and "must establish the complete absence of any state of facts that would support the need for [the statute's] enactment." *Id.* (quotation marks omitted).

[¶31] When conducting this "rational basis" review, we review whether (1) "the police powers [were] exercised to provide for the public welfare; (2) the legislative means employed [were] appropriate to achieve the ends sought; and (3) the manner of exercising the power [was] not . . . unduly arbitrary or capricious." *Id.* ¶ 6 (quotation marks omitted). "The Legislature need not provide the facts upon which its rationale rests, so long as *some* theoretical explanation exists." *Id.*

[¶32] The requests made by MacImage and Simpson alerted the Legislature to the novel issue before the counties, and the resulting public law sought to bring legislatively established standards to an area of generally applicable law that lacked definition at the time of MacImage's and Simpson's requests. The Legislature was required to balance the public's interest in access to the records with the governmental costs of making those records available. It has done so in an area of evolving technology and varied fiscal considerations, and it has acknowledged the need for attention to the emerging issues through the sunset

provision that will require the issues to be revisited by the counties' commissioners. We conclude that the Legislature had a rational basis for acting to resolve an issue of important public interest. *See id.* The means employed to address the issue may have resulted in reduced anticipated revenues for MacImage and Simpson, but the Legislature could have balanced their private interests with the counties' and the public's interests to design its legislative solution, and this type of exercise of its legislative power is neither arbitrary nor capricious. *See id.* There was no due process violation.

c. Equal Protection

[¶33] To succeed in an equal protection challenge where, as here, the challenging party is not a member of a suspect class, a party challenging a statute must show (1) "that similarly situated persons are not treated equally under the law," and (2) that the statute is not "rationally related to a legitimate state interest." *Town of Frye Island v. State*, 2008 ME 27, ¶ 14, 940 A.2d 1065. "When a statute is reviewed under the rational basis standard, it bears a strong presumption of validity." *Bagley*, 1999 ME 60, ¶ 28, 728 A.2d 127. It will be deemed unconstitutional on equal protection grounds only if the discriminatory legislative classification is "arbitrary, unreasonable or irrational." *McBreairty v. Comm'r of Admin. & Fin. Servs.*, 663 A.2d 50, 53 (Me. 1995) (quotation marks omitted).

[¶34] Regarding the first of the factors for our consideration, MacImage and Simpson have failed to establish that their situation differs from others similarly situated. *See Town of Frye Island*, 2008 ME 27, ¶ 14, 940 A.2d 1065. The maximum rates that may be charged to MacImage are no greater than the maximum rates that may be charged to others seeking either individual copies or bulk data during the same time period.

[¶35] Moreover, in considering the second part of the equal protection analysis, the staggered timing of the statute is "rationally related to a legitimate state interest" in balancing the interests of the registers of deeds, the interests of the requestors, and the interests of the public. *See id.* There is a rational relationship between the provisions of P.L. 2011, ch. 378, § 3 and the legislative purpose to provide guidance on how high a fee would have to be to be unreasonable within the meaning of title 33 during the time before the Legislature acted to clarify its intended meaning. Pursuant to section 3, all digital copy rates of $1.50 or less per page set between September 1, 2009, and the legislation's June 16, 2011, effective date are deemed reasonable. This portion of the legislation demonstrates an effort to provide some limited guidance regarding decisions made by counties when the statute provided only a vague reasonableness standard, and other portions of the Act give the counties direction for setting fees in the future. Because the legislation does not treat similarly situated parties differently and bears a rational

relationship to a legitimate state interest, it does not violate the Equal Protection Clause. *Town of Frye Island*, 2008 ME 27, ¶ 14, 940 A.2d 1065.

d. Takings Clause

[¶36] The government may not take private property for public use without providing just compensation. U.S. Const. amend. V; Me. Const. art. I, § 21. "Although both tangible and intangible property may be the subject of an impermissible taking, there is no property right to potential or future profits." *Me. Beer & Wine Wholesalers Ass'n v. State*, 619 A.2d 94, 97 (Me. 1993). Thus, although MacImage and Simpson requested digital copies of the registry records, their planned commercial enterprise does not create an existing property interest in obtaining those records without paying a reasonable fee. Accordingly, no governmental taking has been effectuated through the enactment of P.L. 2011, ch. 378.

e. Special Legislation Clause

[¶37] "The Legislature shall, from time to time, provide, as far as practicable, by general laws, for all matters usually appertaining to special or private legislation." Me. Const. art. IV, pt. 3, § 13. The enacted legislation does not offend this Special Legislation Clause because the enacted law is not a private resolve singling out an individual for unique treatment; rather, the Legislature was attempting to address a newly developing issue that broadly affects the counties in

the state and all entities who have requested—and will request—bulk digital information from the counties. *Cf. Brann v. State*, 424 A.2d 699, 704 (Me. 1981) (stating that the Special Legislation Clause prohibits special legislation that exempts one individual from generally applicable legal requirements, with general legislation preferred "as far as practicable"). We discern no constitutional infirmity.

C. Application of the Legislation

[¶38] Having concluded that the most recent legislation applies to this matter, we now consider our role in interpreting and applying that legislation as an appellate court. The United States Supreme Court addressed this narrow issue in the early nineteenth century:

> It is in the general true that the province of an appellate court is only to inquire whether a judgment when rendered was erroneous or not. But if, subsequent to the judgment, and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation is denied.

United States v. Schooner Peggy, 5 U.S. 103, 110 (1801). In such circumstances, "[i]t is the obligation of the last court in the hierarchy that rules on the case to give effect to [the] latest enactment, even when that has the effect of overturning the judgment of an inferior court, since each court, at every level, must decide according to existing laws." *Miller v. French*, 530 U.S. 327, 344 (2000) (quotation marks omitted).

[¶39] In *Schooner Peggy*, the Supreme Court vacated a judgment condemning a vessel and then independently interpreted a newly applicable treaty with France to require that the vessel be restored to France. 5 U.S. at 108-10. By contrast, we recently remanded a matter for the trial court to conduct further proceedings based on legislation that took effect after the entry of the trial court's judgment because the newly enacted statute authorized an entire process that had not been afforded to the appellant under the earlier statute. *Morrill*, 2009 ME 116, ¶¶ 2-3, 6-8, 983 A.2d 1065. Accordingly, when legislation enacted after the entry of a trial court's judgment has been found to be applicable to the dispute, we will resolve any purely legal issues based on our interpretation and application of the law to the facts found by the trial court, *see Schooner Peggy*, 5 U.S. at 110, but if any further factual findings or adjudicatory proceedings are required, we will remand the matter to the trial court, *see Miller*, 530 U.S. at 344.

[¶40] We therefore begin by considering the undisputed factual findings of the Superior Court to determine whether, as a matter of law, each of the counties imposed a reasonable fee of "up to $1.50 per page for digital copies" in response to MacImage's and Simpson's requests. P.L. 2011, ch. 378, § 3. If any of the counties have failed to meet this requirement, we will remand the matter for appropriate action.

[¶41] Applying the test set forth by the Legislature, four of the counties—Androscoggin, Cumberland, Knox, and York—offered a bulk download of digital images for less than $1.50 per page, taking into account the per-page cost of flat fees imposed to cover county costs for technical assistance. Thus, with respect to these four counties, we vacate the judgment of the Superior Court and remand for entry of judgment in favor of these counties.

[¶42] The other two counties that have appealed—Aroostook and Penobscot—offered access to digital land records on their websites for a cost of less than $1.50 per page[12] but did not offer to provide digital copies of their indexes in response to the MacImage and Simpson requests. Because further proceedings are necessary, we remand those matters to the Superior Court.

D. Prospective Relief

[¶43] Aroostook, Cumberland, Knox, and York Counties contend that the Superior Court's ruling on anticipated future requests responded to a controversy that was not pending and justiciable. "A justiciable controversy is a claim of present and fixed rights, as opposed to hypothetical or future rights, asserted by one party against another who has an interest in contesting the claim." *Flaherty v. Muther*, 2011 ME 32, ¶ 87, 17 A.3d 640 (quotation marks omitted); *see also Berry*

[12] Although it would take more time for MacImage or Simpson to download all of the files using the websites, which would therefore increase the costs associated with their intended commercial enterprise, the counties have nonetheless satisfied the public purpose of title 33 to provide access to information and allow copies at a reasonable fee. *See* P.L. 2011, ch. 378, Emergency Preamble.

v. Daigle, 322 A.2d 320, 325-26 (Me. 1974) (same in context of a declaratory judgment action). Any requests for rulings on fees that the counties may charge in the future were not properly before the trial court and, in light of the new legislation discussed above, any pronouncements on such requests must be vacated.

The entry is:

> Judgment vacated. Remanded to the Superior Court for entry of judgment in favor of Androscoggin, Cumberland, Knox, and York Counties and for further proceedings with respect to Aroostook and Penobscot Counties.

On the briefs:

Bryan M. Dench, Esq., and Michael S. Malloy, Esq., Skelton, Taintor & Abbott, Auburn, for appellant Androscoggin County

Peter T. Marchesi, Esq., and Cassandra S. Shaffer, Esq., Wheeler & Arey, P.A., Waterville, for appellants Aroostook County and Knox County

Brendan P. Rielly, Esq., and Patricia M. Dunn, Esq., Jensen Baird Gardner & Henry, Portland, for appellant Cumberland County

Edward W. Gould, Esq., and Joseph M. Bethony, Esq., Gross, Minsky, & Mogul, P.A., Bangor, for appellant Penobscot County

Gene R. Libby, Esq., and Hillary J. Massey, Esq., Libby O'Brien Kingsley & Champion, LLC, Kennebunk, for appellant York County

Sigmund D. Schutz, Esq., Preti Flaherty Beliveau & Pachios, LLP, Portland, for cross-appellant MacImage of Maine, LLC

John P. Simpson, cross-appellant pro se

Frank M. Underkuffler, Esq., Farmington, for amici curiae Franklin County and Sagadahoc County

Kelly W. McDonald, Esq., and Chelsea E. Callanan, Esq., Murray, Plumb & Murray, Portland, and Zachary Heiden, American Civil Liberties Union Foundation of Maine, Portland, for amicus curiae American Civil Liberties Union Foundation of Maine

Patrick Strawbridge, Esq., Bingham McCutchen LLP, Boston, Massachusetts, for amicus curiae Maine Freedom of Information Coalition

At oral argument:

Peter Marchesi, Esq., for appellants Androscoggin County, Aroostook County, Cumberland County, Knox County, Penobscot County, and York County

Sigmund D. Schutz, Esq., for cross-appellant MacImage of Maine, LLC

John P. Simpson, cross-appellant pro se

Frank M. Underkuffler, Esq., for amici curiae Franklin County and Sagadahoc County

Patrick Strawbridge, Esq., for amicus curiae Maine Freedom of Information Coalition

Kelly W. McDonald, Esq., for amicus curiae American Civil Liberties Union Foundation of Maine

APPROVED CHAPTER

JUN 16 '11 378

STATE OF MAINE BY GOVERNOR PUBLIC LAW

IN THE YEAR OF OUR LORD

TWO THOUSAND AND ELEVEN

H.P. 1100 - L.D. 1499

An Act Concerning Fees for Users of County Registries of Deeds

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the registry of deeds offices provide a valuable public service in recording and maintaining the land records of the State; and

Whereas, current law allows the county commissioners to set fees for copying at only the cost of providing the copies; and

Whereas, the cost to the counties to maintain the information and to make it accessible cannot be adequately reimbursed by fees defined by copying cost; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 33 MRSA §751, sub-§14, as amended by PL 2009, c. 575, §2, is repealed.

Sec. 2. 33 MRSA §751, sub-§§14-B and 14-C are enacted to read:

14-B. Abstracts and copies. Making abstracts and copies of records at the office of the register of deeds as follows:

A. Five dollars per page for paper abstracts and copies of plans;

B. One dollar per page for other paper abstracts and copies; and

C. Fifty cents per page for digital abstracts and copies, except that the fee is 5¢ per page for copies of 1,000 or more digital abstracts and copies of consecutive records.

This subsection is repealed July 31, 2012;

14-C. Abstracts and copies. Beginning August 1, 2012, making abstracts and copies from the records, a reasonable fee as determined by the county commissioners for

6-3

each category of abstracts and copies, such as paper copies, attested copies, copies obtained online and bulk transfers of copies. In setting a reasonable fee for each category of abstracts and copies, the commissioners shall consider factors relating to the cost of producing and making copies available, which may include, but are not limited to: the cost of depleted supplies; records storage media costs; actual mailing and alternative delivery costs or other transmitting costs; amortized infrastructure costs; any direct equipment operating and maintenance costs; costs associated with media processing time; personnel costs, including actual costs paid to private contractors for copying services; contract and contractor costs for database maintenance and for online provision and bulk transfer of copies in a manner that protects the security and integrity of registry documents; and a reasonable rate for the time a computer server is dedicated to fulfilling the request; and

Sec. 3. Legislative intent; retroactivity. The Legislature finds that the following fees charged by an office of a register of deeds for making abstracts and copies from records, whether in paper or digital form, including for bulk copies or transfers of such copies, between September 1, 2009 and the effective date of this Act are reasonable and in accordance with the legislative intent of Public Law 2009, chapter 575, section 2 and are expressly authorized: a fee of up to $1.50 per page for paper copies and a fee of up to $1.50 per page for digital copies. Nothing in this section may be interpreted as a legislative finding that a higher fee charged by an office of a register of deeds between September 1, 2009 and the effective date of this Act to persons who were not subscribers to the online services of a register of deeds is unreasonable. Notwithstanding the Maine Revised Statutes, Title 1, section 302, this section applies retroactively to September 1, 2009.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

APPROVED CHAPTER

MAR 16 '12 508

BY GOVERNOR PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND TWELVE

S.P. 526 - L.D. 1616

An Act Concerning Copying Fees for Users of County Registries of Deeds

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, county registries of deeds provide a valuable public service in recording and maintaining the land records of the State; and

Whereas, under current law, the fees specified for making abstracts and copies of records at registries of deeds will be repealed July 31, 2012; and

Whereas, in order to keep the fees in effect, this legislation must be enacted as an emergency measure; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 33 MRSA §751, sub-§14-B, as enacted by PL 2011, c. 378, §2, is amended to read:

14-B. Abstracts and copies. Making abstracts and copies of records at the office of the register of deeds as follows:

A. Five dollars per page for paper abstracts and copies of plans;

B. One dollar per page for other paper abstracts and copies; and

C. Fifty cents per page for digital abstracts and copies, except that the fee is 5¢ per page for copies of 1,000 or more digital abstracts and copies of consecutive records~~.~~; and

~~This subsection is repealed July 31, 2012;~~

6-4

Sec. 2. 33 MRSA §751, sub-§14-C, as enacted by PL 2011, c. 378, §2, is repealed.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Maine Freedom of Information Coalition

PO Box 232
Augusta, Maine
04333

April 27, 2012

The Honorable David Hastings, Senate Chair
The Honorable Joan Nass, House Chair
Maine Right To Know Advisory Committee

Delivered via email

Dear Senator Hastings and Representative Nass:

An issue has come to our attention, and the members of the Maine Freedom of Information Coalition respectfully request that it be examined by the RTKAC when it reconvenes this summer.

The Federal Communications Commission has mandated that public safety agencies and other VHF and UHF land mobile spectrum users must migrate to narrower-bandwidth equipment by January 1, 2013. This shift is commonly known as "narrowbanding." In Maine, this migration, called MSCommNet, is being managed by the state Office of Information Technology. Among the features being touted for MSCommNet is the following: "Local Control - Each state agency will be able to decide who can listen and speak on their talk group and can assign their own security settings."[1]

It appears that public safety and other agencies in Maine and elsewhere are taking advantage of this "feature" by encrypting their radio transmissions[2], making it impossible for anyone to "listen in" on a conventional public-safety radio scanner. Indeed, this debate has been raging elsewhere since before 9/11/01[3], though it is relatively new to Maine.

While we recognize that there are legitimate public safety reasons for encrypting certain radio transmissions, such as for SWAT teams or hostage-response teams, we think a wholesale shift to

[1] Found at http://www.maine.gov/oit/services/radio/mscommnet/faq/MsCommNet_flyer.pdf
[2] For example, the Presque Isle police department has already migrated to an encrypted radio capability, with the Presque Isle fire department soon to follow. An encrypted system is also being used by the Caribou public works department. See http://www.mainemediaresources.com/ffj/02221201b.htm
[3] See, for example, "Police Scanners in the Digital Age," written in the summer of 2001, available at http://www.rtdna.org/pages/media_items/police-scanners-in-the-digital-age181.php

encryption of public safety radio transmissions raises several important freedom of information concerns:

- If such radio transmissions are encrypted, is it now, or will it become, illegal for members of the public to purchase scanners capable of decrypting them?
- If so, does this raise a concern that it has or will become illegal for citizens to monitor business conducted by public officials at public expense?
- What assurance will there be that the public will have access to the recordings, transcripts, or other public records of encrypted radio transmissions?
- What public safety concerns are raised by the inability of the news media to inform the public about breaking news or weather events that pose a risk to life or property if the media are unable to monitor public safety radio transmissions in real time?
- Is it possible to address the need for a limited amount of encryption capability by setting aside certain frequencies for this use, and keeping the remaining frequencies "in the clear"?

We offer the following in order to inform your discussion:

There is no HIPAA[4] implication in the move to encryption. HIPAA's health information privacy provisions apply only to "covered entities," which are defined in HIPAA rules[5] as follows:

> *Covered entity means:*
> *(1) A health plan.*
> *(2) A health care clearinghouse.*
> *(3) A health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.*

Public safety agencies, such as ambulance services, thus are not covered by HIPAA's privacy requirements.

There is nothing in the Federal Communications Commission's rules for the narrowbanding migration, or in the Federal Emergency Management Agency's grant guidance for funding for the migration, that requires a public safety agency to encrypt its radio transmissions. In fact, the U.S. Department of Homeland Security's SAFECOM Program has published on its website a document from the Public Safety Wireless Network Program, titled Security Issues Report—Impediments and Issues on Using Encryption on Public Safety Radio Systems, which reaches this conclusion:

> *The case for improved security in communications and system architecture through the use of encryption technologies still has not been made. Expense, coupled with the concern that less-than-ideal management resources and practices are available, remain significant reasons why radio system managers find it prohibitive to move encryption into their systems for consistently secured radio traffic.*

---

[4] The Health Insurance Portability and Accountability Act of 1996 (HIPAA)

[5] 45 CFR 160.103, which can be viewed at http://www.gpo.gov/fdsys/pkg/CFR-2007-title45-vol1/pdf/CFR-2007-title45-vol1-sec160-103.pdf

The report is at http://tinyurl.com/cbe4wna[6].

In conclusion, we feel that "security" is not a suitable reason for public officials to draw the shade over an established source of sunshine. While many law enforcement agencies have argued that encrypted communications will keep their personnel safer and prevent criminals from monitoring their radio traffic, they have offered little hard evidence that those concerns outweigh the longstanding public interest in the openness of government activities. The secrecy that results from encrypted public safety information also impedes the public's right to know about matters of public concern and activities that are funded with public dollars.

We thank you for your attention to the foregoing, and for your exemplary service to the people of Maine.

Very truly yours,

Suzanne D. Goucher
President, MFOIC

[6] The full link is: http://www.safecomprogram.gov/SiteCollectionDocuments/Security_Issues_Report%20-%20Impediments_and_Issues_on_Using_Encryption_on_Public_Safety_Radio_Systems.pdf

HOUSE OF REPRESENTATIVES
2 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0002
(207) 287-1400
TTY: (207) 287-4469

Mary Pennell Nelson
213 Foreside Road
Falmouth, ME 04105
Residence: (207) 781-3750
Fax: (207) 781-7130
Cell Phone: (207) 831-6049
E-Mail: mpn3@maine.rr.com
State House E-Mail:
RepMary.Nelson@legislature.maine.gov

May 17, 2012

Sen. David R. Hastings, III
Rep. Joan M. Nass
Co-Chairs, Right to Know Advisory Committee

Re: Parental Privacy Issues in Maine Schools

Dear Sen. Hastings and Rep. Nass:

I understand that the Right to Know Advisory Committee will be convening this summer, to continue its consideration of matters relating to the Freedom of Access statute.

I would appreciate it if the Advisory Committee would consider an issue which has recently arisen in District 112. The Falmouth School Department has received a request from a citizen for the home e-mail addresses of all parents of students in the Falmouth school system. This request raises very serious confidentiality and privacy concerns for students, parents and their families.

As you may know, increasingly public schools are utilizing web-based student information systems, such as PowerSchool. These web-based portals connect students, teachers, administrators, and parents and provide parents and students with real-time information on grades, attendance, homework, scores, teacher comments, and school bulletins. Parents must provide their e-mail addresses so that they may gain access to their students' confidential education records through these portals and so that school officials may communicate electronically with parents about their children. These electronic communications are critical to providing parents with the opportunity to collaborate on their child's education by gaining access to student records and other important educational updates. The school department maintains parent e-mail addresses in the same secure, password-protected database used to maintain other confidential student/family information.

Because e-mail addresses and other electronic information are maintained in student education records, and are provided to enable parents to access those confidential records, the school department believes that they are confidential under the Federal Family Educational Rights and Privacy Act. However, this is not clear as a matter of Maine law, and I believe it is critical to clarify our statutes to ensure that the confidentiality of this and other sensitive parental information is maintained.

I intend to sponsor a bill in the upcoming legislative session to address this issue, but would also very much appreciate it if the Advisory Committee could consider the issue as part of its deliberations this summer.

Sincerely,

Mary P. Nelson

Mary Pennell Nelson
State Representative

Right to Know Advisory Committee
Subcommittees
Updated 11/1/2011 12:21 PM

Bulk Records Subcommittee
Mike Cianchette, Chair
Perry Antone
Joe Brown
Richard Flewelling
Mal Leary
Judy Meyer
Sen. Hastings*
Rep. Nass*

Legislative Subcommittee
Judy Meyer, Chair
Shenna Bellows
Mike Cianchette
Richard Flewelling
Ted Glessner
Mal Leary
Bill Logan
Kelly Morgan
Linda Pistner
Harry Pringle
Sen. Hastings*
Rep. Nass*

Public Records Exception Subcommittee
Shenna Bellows, Chair
Perry Antone
Joe Brown
AJ Higgins
Linda Pistner
(Ted Glessner, if needed)
(Harry Pringle, if needed)
(Robb Weaver, if needed)

Sen. Hastings*
Rep. Nass
*denotes ex officio status, do not count for a quorum

Not assigned as of 11/1/11: Mike Violette

G:\STUDIES 2011\Right to Know Advisory Committee\Subcommittees lists.doc (11/1/2011 12:22:00 PM)

Calendar for June–December 2012 (United States)

June

Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

4:○ 11:◑ 19:● 26:◐

July

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

3:○ 10:◑ 19:● 26:◐

August

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

1:○ 9:◑ 17:● 24:◐ 31:○

September

Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

8:◑ 15:● 22:◐ 29:○

October

Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

8:◑ 15:● 21:◐ 29:○

November

Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

6:◑ 13:● 20:◐ 28:○

December

Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

6:◑ 13:● 20:◐ 28:○

126th Legislature Convenes

Report due January 15, 2013

Holidays and Observances:

Jun 17	Father's Day	Nov 11	Veterans Day
Jul 4	Independence Day	Nov 12	'Veterans Day' observed
Sep 3	Labor Day	Nov 22	Thanksgiving Day
Oct 8	Columbus Day (Most regions)	Dec 24	Christmas Eve
Oct 31	Halloween	Dec 25	Christmas Day
Nov 6	Election Day	Dec 31	New Year's Eve

Calendar generated on www.timeanddate.com/calendar

10-1

Maine Revised Statutes

§411 PDF
§411 WORD/RTF
STATUTE SEARCH
CH. 13 CONTENTS
TITLE 1 CONTENTS
LIST OF TITLES
DISCLAIMER
MAINE LAW
REVISOR'S OFFICE
MAINE LEGISLATURE

§410 §412

Title 1: GENERAL PROVISIONS
Chapter 13: PUBLIC RECORDS AND PROCEEDINGS
Subchapter 1: FREEDOM OF ACCESS

§411. Right To Know Advisory Committee

1. Advisory committee established. The Right To Know Advisory Committee, referred to in this chapter as "the advisory committee," is established to serve as a resource for ensuring compliance with this chapter and upholding the integrity of the purposes underlying this chapter as it applies to all public entities in the conduct of the public's business.

[2005, c. 631, §1 (NEW) .]

2. Membership. The advisory committee consists of the following members:

A. One Senator who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the President of the Senate; [2005, c. 631, §1 (NEW).]

B. One member of the House of Representatives who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the Speaker of the House; [2005, c. 631, §1 (NEW).]

C. One representative of municipal interests, appointed by the Governor; [2005, c. 631, §1 (NEW).]

D. One representative of county or regional interests, appointed by the President of the Senate; [2005, c. 631, §1 (NEW).]

E. One representative of school interests, appointed by the Governor; [2005, c. 631, §1 (NEW).]

F. One representative of law enforcement interests, appointed by the President of the Senate; [2005, c. 631, §1 (NEW).]

G. One representative of the interests of State Government, appointed by the Governor; [2005, c. 631, §1 (NEW).]

H. One representative of a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House; [2005, c. 631, §1 (NEW).]

I. One representative of newspaper and other press interests, appointed by the President of the Senate; [2005, c. 631, §1 (NEW).]

J. One representative of newspaper publishers, appointed by the

Speaker of the House; [2005, c. 631, §1 (NEW).]

K. Two representatives of broadcasting interests, one appointed by the President of the Senate and one appointed by the Speaker of the House; [2005, c. 631, §1 (NEW).]

L. Two representatives of the public, one appointed by the President of the Senate and one appointed by the Speaker of the House; and [2005, c. 631, §1 (NEW).]

M. The Attorney General or the Attorney General's designee. [2005, c. 631, §1 (NEW).]

The advisory committee shall invite the Chief Justice of the Supreme Judicial Court to designate a member of the judicial branch to serve as a member of the committee.

[2005, c. 631, §1 (NEW) .]

3. Terms of appointment. The terms of appointment are as follows.

A. Except as provided in paragraph B, members are appointed for terms of 3 years. [2005, c. 631, §1 (NEW).]

B. Members who are Legislators are appointed for the duration of the legislative terms of office in which they were appointed. [2005, c. 631, §1 (NEW).]

C. Members may serve beyond their designated terms until their successors are appointed. [2005, c. 631, §1 (NEW).]

[2005, c. 631, §1 (NEW) .]

4. First meeting; chair. The Executive Director of the Legislative Council shall call the first meeting of the advisory committee as soon as funding permits. At the first meeting, the advisory committee shall select a chair from among its members and may select a new chair annually.

[2005, c. 631, §1 (NEW) .]

5. Meetings. The advisory committee may meet as often as necessary but not fewer than 4 times a year. A meeting may be called by the chair or by any 4 members.

[2005, c. 631, §1 (NEW) .]

6. Duties and powers. The advisory committee:

A. Shall provide guidance in ensuring access to public records and proceedings and help to establish an effective process to address general compliance issues and respond to requests for interpretation and clarification of the laws; [2005, c. 631, §1 (NEW).]

B. Shall serve as the central source and coordinator of information about the freedom of access laws and the people's right to know. The advisory committee shall provide the basic information about the requirements of the law and the best

2

practices for agencies and public officials. The advisory committee shall also provide general information about the freedom of access laws for a wider and deeper understanding of citizens' rights and their role in open government. The advisory committee shall coordinate the education efforts by providing information about the freedom of access laws and whom to contact for specific inquiries; [RR 2005, c. 2, §1 (COR).]

C. Shall serve as a resource to support the establishment and maintenance of a central publicly accessible website that provides the text of the freedom of access laws and provides specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. The website must include the contact information for agencies, as well as whom to contact with complaints and concerns. The website must also include, or contain a link to, a list of statutory exceptions to the public records laws; [RR 2005, c. 2, §1 (COR).]

D. Shall serve as a resource to support training and education about the freedom of access laws. Although each agency is responsible for training for the specific records and meetings pertaining to that agency's mission, the advisory committee shall provide core resources for the training, share best practices experiences and support the establishment and maintenance of online training as well as written question-and-answer summaries about specific topics. The advisory committee shall recommend a process for collecting the training completion records required under section 412, subsection 3 and for making that information publicly available; [2007, c. 576, §1 (AMD).]

E. Shall serve as a resource for the review committee under subchapter 1-A in examining public records exceptions in both existing laws and in proposed legislation; [2005, c. 631, §1 (NEW).]

F. Shall examine inconsistencies in statutory language and may recommend standardized language in the statutes to clearly delineate what information is not public and the circumstances under which that information may appropriately be released; [2005, c. 631, §1 (NEW).]

G. May make recommendations for changes in the statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and regional governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws and their underlying principles. The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation based on the advisory committee's recommendations; [2005, c. 631, §1 (NEW).]

3

H. Shall serve as an adviser to the Legislature when legislation affecting public access is considered; [2005, c. 631, §1 (NEW).]

I. May conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss, publicize the needs of and consider solutions to problems concerning access to public proceedings and records; [2005, c. 631, §1 (NEW).]

J. Shall review the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public; and [2005, c. 631, §1 (NEW).]

K. May undertake other activities consistent with its listed responsibilities. [2005, c. 631, §1 (NEW).]

[2007, c. 576, §1 (AMD) .]

7. Outside funding for advisory committee activities. The advisory committee may seek outside funds to fund the cost of public hearings, conferences, workshops, other meetings, other activities of the advisory committee and educational and training materials. Contributions to support the work of the advisory committee may not be accepted from any party having a pecuniary or other vested interest in the outcome of the matters being studied. Any person, other than a state agency, desiring to make a financial or in-kind contribution shall certify to the Legislative Council that it has no pecuniary or other vested interest in the outcome of the advisory committee's activities. Such a certification must be made in the manner prescribed by the Legislative Council. All contributions are subject to approval by the Legislative Council. All funds accepted must be forwarded to the Executive Director of the Legislative Council along with an accounting record that includes the amount of funds, the date the funds were received, from whom the funds were received and the purpose of and any limitation on the use of those funds. The Executive Director of the Legislative Council shall administer any funds received by the advisory committee.

[2005, c. 631, §1 (NEW) .]

8. Compensation. Legislative members of the advisory committee are entitled to receive the legislative per diem, as defined in Title 3, section 2, and reimbursement for travel and other necessary expenses for their attendance at authorized meetings of the advisory committee. Public members not otherwise compensated by their employers or other entities that they represent are entitled to receive reimbursement of necessary expenses and, upon a demonstration of financial hardship, a per diem equal to the legislative per diem for their attendance at authorized meetings of the advisory committee.

[2005, c. 631, §1 (NEW) .]

9. Staffing. The Legislative Council shall provide staff support

(4)

for the operation of the advisory committee, except that the Legislative Council staff support is not authorized when the Legislature is in regular or special session. In addition, the advisory committee may contract for administrative, professional and clerical services if funding permits.

[2005, c. 631, §1 (NEW) .]

10. Report. By January 15, 2007 and at least annually thereafter, the advisory committee shall report to the Governor, the Legislative Council, the joint standing committee of the Legislature having jurisdiction over judiciary matters and the Chief Justice of the Supreme Judicial Court about the state of the freedom of access laws and the public's access to public proceedings and records.

[2005, c. 631, §1 (NEW) .]

SECTION HISTORY
RR 2005, c. 2, §1 (COR). 2005, c. 631, §1 (NEW). 2007, c. 576, §1 (AMD).

Data for this page extracted on 02/01/2012 09:57:45.

5

Maine Revised Statutes

§412 PDF
§412 WORD/RTF
STATUTE SEARCH
CH. 13 CONTENTS
TITLE 1 CONTENTS
LIST OF TITLES
DISCLAIMER
MAINE LAW
REVISOR'S OFFICE
MAINE LEGISLATURE

§411 §431

Title 1: GENERAL PROVISIONS
Chapter 13: PUBLIC RECORDS AND PROCEEDINGS
Subchapter 1: FREEDOM OF ACCESS

§412. Public records and proceedings training for certain elected officials

1. Training required. Beginning July 1, 2008, an elected official subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official shall complete the training not later than the 120th day after the date the elected official takes the oath of office to assume the person's duties as an elected official. For elected officials subject to this section serving in office on July 1, 2008, the training required by this section must be completed by November 1, 2008.

[2007, c. 349, §1 (NEW) .]

amended by PL 2011 c. 662 to include "public access officers"

2. Training course; minimum requirements. The training course under subsection 1 must be designed to be completed by an official in less than 2 hours. At a minimum, the training must include instruction in:

A. The general legal requirements of this chapter regarding public records and public proceedings; [2007, c. 349, §1 (NEW).]

B. Procedures and requirements regarding complying with a request for a public record under this chapter; and [2007, c. 349, §1 (NEW).]

C. Penalties and other consequences for failure to comply with this chapter. [2007, c. 349, §1 (NEW).]

An elected official meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information.

[2007, c. 576, §2 (AMD) .]

3. Certification of completion. Upon completion of the training course required under subsection 1, the elected official shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training completed and the date of completion. The elected official shall keep

7

the record or file it with the public entity to which the official was elected.

[2007, c. 576, §2 (AMD) .]

4. Application. This section applies to the following elected officials:

A. The Governor; [2007, c. 349, §1 (NEW).]

B. The Attorney General, Secretary of State, Treasurer of State and State Auditor; [2007, c. 349, §1 (NEW).]

C. Members of the Legislature elected after November 1, 2008; [2007, c. 576, §2 (AMD).]

D. [2007, c. 576, §2 (RP).]

E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments; [2007, c. 576, §2 (NEW).]

F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments; [2007, c. 576, §2 (NEW).]

G. Officials of school units and school boards; and [2007, c. 576, §2 (NEW).]

H. Officials of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2. [2007, c. 576, §2 (NEW).]

[2007, c. 576, §2 (AMD) .]

SECTION HISTORY
2007, c. 349, §1 (NEW). 2007, c. 576, §2 (AMD).

Data for this page extracted on 02/01/2012 09:57:45.

Maine Revised Statutes

§200-I PDF
§200-I WORD/RTF
STATUTE SEARCH
CH. 9 CONTENTS
TITLE 5 CONTENTS
LIST OF TITLES
DISCLAIMER
MAINE LAW
REVISOR'S OFFICE
MAINE LEGISLATURE

§200-H Title 5: §201

ADMINISTRATIVE PROCEDURES AND SERVICES
Part 1: STATE DEPARTMENTS
Chapter 9: ATTORNEY GENERAL

§200-I. Public Access Division; Public Access Ombudsman

1. Public Access Division; Public Access Ombudsman. There is created within the Department of the Attorney General the Public Access Division to assist in compliance with the State's freedom of access laws, Title 1, chapter 13. The Attorney General shall appoint the Public Access Ombudsman, referred to in this section as "the ombudsman," to administer the division.

[2007, c. 603, §1 (NEW) .]

2. Duties. The ombudsman shall:

A. Prepare and make available interpretive and educational materials and programs concerning the State's freedom of access laws in cooperation with the Right To Know Advisory Committee established in Title 1, section 411; [2007, c. 603, §1 (NEW).]

B. Respond to informal inquiries made by the public and public agencies and officials concerning the State's freedom of access laws; [2007, c. 603, §1 (NEW).]

C. Respond to and work to resolve complaints made by the public and public agencies and officials concerning the State's freedom of access laws; [2007, c. 603, §1 (NEW).]

D. Furnish, upon request, advisory opinions regarding the interpretation of and compliance with the State's freedom of access laws to any person or public agency or official in an expeditious manner. The ombudsman may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under Title 1, chapter 13. Advisory opinions must be publicly available after distribution to the requestor and the parties involved; and [2007, c. 603, §1 (NEW).]

E. Make recommendations concerning ways to improve public access to public records and proceedings. [2007, c. 603, §1 (NEW).]

[2007, c. 603, §1 (NEW) .]

3. Assistance. The ombudsman may request from any public agency or official such assistance, services and information as will

(9)

enable the ombudsman to effectively carry out the responsibilities of this section.

[2007, c. 603, §1 (NEW) .]

4. Confidentiality. The ombudsman may access records that a public agency or official believes are confidential in order to make a recommendation concerning whether the public agency or official may release the records to the public. The ombudsman's recommendation is not binding on the public agency or official. The ombudsman shall maintain the confidentiality of records and information provided to the ombudsman by a public agency or official under this subsection and shall return the records to the public agency or official when the ombudsman's review is complete.

[2007, c. 603, §1 (NEW) .]

5. Report. The ombudsman shall submit a report not later than March 15th of each year to the Legislature and the Right To Know Advisory Committee established in Title 1, section 411 concerning the activities of the ombudsman for the previous year. The report must include:

A. The total number of inquiries and complaints received; [2007, c. 603, §1 (NEW).]

B. The number of inquiries and complaints received respectively from the public, the media and public agencies or officials; [2007, c. 603, §1 (NEW).]

C. The number of complaints received concerning respectively public records and public meetings; [2007, c. 603, §1 (NEW).]

D. The number of complaints received concerning respectively:

(1) State agencies;

(2) County agencies;

(3) Regional agencies;

(4) Municipal agencies;

(5) School administrative units; and

(6) Other public entities; [2007, c. 603, §1 (NEW).]

E. The number of inquiries and complaints that were resolved; [2007, c. 603, §1 (NEW).]

F. The total number of written advisory opinions issued and pending; and [2007, c. 603, §1 (NEW).]

G. Recommendations concerning ways to improve public access to public records and proceedings. [2007, c. 603, §1 (NEW).]

[2007, c. 603, §1 (NEW) .]

6. Repeal.

(10)